United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1563

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

COPY RECEIVED
PAUL J. CURRAN
JUN 26 1974
U. S. ATTORNEY
SO. DIST. OF N.Y.

Docket No. 74-1563

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

PAUL LAWRENCE ROSENRAUCH,
a/k/a LAWRENCE ROSEN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUN 26 1974

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CRIMINAL DOCKET

JUDGE TYLER 73 CRIM. 408 1A

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: 264-6331
vs.	Henry Putzel, III, AUSA
PAUL LAWRENCE ROSENBAUCH, a/k/a Lawrence Rosen	
	For Defendant:

(Cit.) ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED — DATE	NAME	RECEIVED	DISB'S
Fines J.S.2 mailed	✓		4/24/74	Amen	5 -	
Clerk J.S.3 mailed	✓		4/24/74	Mean		5 -
Marshal						
Attorney						
Commissioner's Court						
Witness Title and Sec.						
26:7201 Income tax evasion	(cts.1 & 2)					
26:7206(1) false tax returns	(cts.3 & 4)					
FOUR COUNTS						

DATE	PROCEEDINGS
4-30-73	Filed Indictment
5-21-73	Filed notice of appearance by Joseph P. Hoey, Esq. and Wallace Musoff, Esq., 17 E. 63rd St., NYC. (Hoey: 838-2323 and Musoff: PL 3-5730)
5-21-73	Deft. (Atty. present) pleads not guilty. 10 days for motions. Deft. ordered photographed and fingerprinted. R.O.R. Case assigned to Judge Tyler. -- Ryan, J.
6-8-73	Filed consent order to furnish the deft with a copy of the transcript of the testimony in the matter USA v. Dellacroce et al. before the Grand Jury. Tyler, J.

ONLY COPY AVAILABLE

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDAN
Nov7-73	Filed Govt's notice of readiness for trial.		
[illegible]	Filed [illegible] transcript of proceedings, dated [illegible].		
2/25/74	Deft (atty present) jury trial begun before Judge Tyler.		
2/26/74	Trial cont'd.		
2/27/74	Trial cont'd.		
2/28/74	Trial cont'd.		
3/4/74	Trial cont'd and concluded. Jury verdict. Deft guilty in all counts 1,2,3 & 4. Pre-sentence investigation ordered. Sentence date 4/19/74. ~~Deft released on own recognizance.~~ Tyler,J.		
3/5/74	Filed deft's request to charge.		
3/5/74	Filed deft's further request to charge.		
3/5/74	Filed Govt's request to charge.		
3/5/74	Filed transcript of record of proceedings, dated 2/25/74		
3/5/74	Filed transcript of record of proceedings, dated 2/26/74		
3/5/74	Filed transcript of record of proceedings, dated 2/27/74		
3/5/74	Filed transcript of record of proceedings, dated 2/28/74		
4/19/74	Filed Govt's affdvt re: record with the court as to the Govt's compliance with and the material turned over to deft pursuant to the provisions of T. 18, USC Sec 3500. #74,317		
4/19/74	Filed JUDGMENT (atty presnet) It is adjudged that the deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of SEVENTY (70) DAYS on each counts one and two to be served CONCURRENTLY with each other. On each of counts three and four the imposition of sentence is SUSPENDED and deft. is placed on probation for a period of THREE (3) YEARS subject the standing probation order of this Court and It is adjudged that on each of counts three and four the deft is FINED TWO THOUSAND FIVE HU ($2,500) DOLLARS on each count. (TOTAL FINE $5,000) Fine is to be pa within sixty-days from the time that deft's conviction is affirmed o appeal,or the deft is to be COMMITTED until the fine is paid or he i otherwise discharged according to the law. -AND- THE DEFENDANT IS TO TAXED THE COST OF THE PROSECUTION OF THIS CASE. The deft is release his own recognizance pending appeal. Execution of Judgment and Commi are STAYED pending appeal. Tyler,J. 4/22/74 Issued commitments.		4/22/74 ent.
4/23/74	Filed notice of appeal from judgmt dtd 4/19/74. Mailed copies.		

: 2 U.SA. v. PAUL L. ROSENRAUCH TYLER J. 73 cr. 408

DATE	PROCEEDINGS
May 10-74	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By H. Dimmit
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

PAUL LAWRENCE ROSENRAUCH, a/k/a "Lawrence Rosen,

Defendant.

INDICTMENT

73 Cr. 408

April 30, 1973
assigned Judge Tyler

The Grand Jury charges:

On or about the 1st day of May, 1967, in the Southern District of New York, PAUL LAWRENCE ROSENRAUCH, a/k/a Lawrence Rosen, the defendant, who during the calendar year 1966 was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1966 by preparing and causing to be prepared, by mailing and causing to be mailed, and by filing and causing to be filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, a false and fraudulent income tax return on behalf of himself and his wife wherein it was stated that their taxable income for said calendar year was the sum of $10,476.76 and that the amount of income tax due and owing thereon was the sum of $1924.89 whereas as he then and there well knew, their taxable income for the said calendar year was the sum of $15,076.76 upon which taxable income there was due and owing to the United States of America an income tax of $3,029.19.

(Title 26, United States Code, Section 7201)

COUNT TWO

The Grand Jury further charges:

On or about the 13th day of July, 1968, in the Southern District of New York, PAUL LAWRENCE ROSENBAUCH, a/k/a Lawrence Rosen, the defendant, who during the calendar year 1967 was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1967 by preparing and causing to be prepared, by mailing and causing to be mailed, and by filing and causing to be filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, a false and fraudulent income tax return on behalf of himself and his wife wherein it was stated that their taxable income for said calendar year was the sum of $12,396.00 and that the amount of income tax due and owing thereon was the sum of $2,359 whereas as he then and there well knew, their taxable income for the said calendar year was the sum of $24,007.06 upon which taxable income there was due and owing to the United States of America an income tax of $5,662.54.

(Title 26, United States Code, Section 7201)

COUNT THREE

The Grand Jury further charges:

On or about the 1st day of May, 1967, in the Southern District of New York, PAUL LAWRENCE ROSENBAUCH, a/k/a "Lawrence Rosen", the defendant, unlawfully and knowingly did make and subscribe, and cause to be made and subscribed, an Internal Revenue Service Joint Income Tax Return (Form 1040)

for the calendar year 1966, which contained a written declaration that it was made under the penalties of perjury, and which was filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, which said joint income tax return the defendant did not believe to be true and correct as to every material matter, in that said return failed to include a report of approximately $4,600 of income received by him from Progressive Drug Company, Inc. during the calendar year 1966.

(Title 26, United States Code, Section 7206(1))

COUNT FOUR

The Grand Jury further charges:

On or about the 13th day of July, 1968, in the Southern District of New York, PAUL LAWRENCE ROSENBAUCH, a/k/a "Lawrence Rosen", the defendant, unlawfully and knowingly did make and subscribe, and cause to be made and subscribed, an Internal Revenue Service Joint Income Tax Return (Form 1040) for the calendar year 1967, which contained a written declaration that it was made, under the penalties of perjury, and which was filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, which said joint income tax return the defendant did not believe to be true and correct as to every material matter, in that said return failed to include a report approximately $11,011.06 of income received by him from Intercontinental Hangars, LTD. during the calendar year 1967.

(Title 26, United States Code, Section 7206(1))

FOREMAN

WHITNEY NORTH SEYMOUR, JR.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

vs. : 73 Cr 403

PAUL LAWRENCE ROSENRAUCH, :

Defendant. :

----------x

Before:

HON. HAROLD R. TYLER, JR.,

District Judge

New York, N. Y.
February 25, 1974 - 11:00 a.m.

APPEARANCES:

PAUL J. CURRAN, ESQ.
United States Attorney for the Southern District of New York
BY: JOHN BUSH, ESQ.
Assistant United States Attorney

JOSEPH P. HOEY, ESQ.
WALLACE MUSOFF, ESQ.
Attorneys for the Defendant

- - -

R I C H A R D B E R T O L I, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Bertoli, please speak up in a loud, clear voice so that we can all hear you without any difficulty.

Where do you work, sir?

A I am a certified public accountant, and I work at 25 Broadway. I am president also of Executive Securities Corporation.

Q How long have you been with Executive Securities Corporation?

A For the past two and a half years.

Q Directing your attention to the period from 1966 to 1968, in what type of work were you engaged at that time?

A Certified public accountant, financial adviser.

Q When you say financial adviser, would you state who some of your clients were at that time?

A Mr. Hanger, Inc., Progressive Drug, Twentieth Century Industries, Royal Crown Bottling Company of Newark, New Jersey.

Q During this same period of time were you an

officer or employee of any of the concerns which you have just mentioned?

A Yes, I was.

Q Which ones?

A Mr. Hanger, Inc., and its subsidiaries.

Q What position did you hold with them?

A I functioned as the controller of Mr. Hanger. I was the Assistant Secretary of Intercontinental Hangers. I believe I was the Secretary of Utility Molding Corporation.

Q Utility Molding Corporation --

A A wholly owned su bsidiary of Mr. Hanger, Inc.

Q What was Intercontinental Hangers, Ltd.?

A Intercontinental Hangers, Ltd., was a Canadian corporation which was formed as a foreign sales outlet for a product of Mr. Hanger.

Q During what time did you function as an officer and employee of Mr. Hanger?

A From its inception I believe in December of 1965 until my resignation on April 15, 1968, but I continued until June 1, '68.

Q In connection with the services to these several concerns, did you become acquainted with a Lawrence Rosen?

A Yes, I did.

Q Would you point him out to the members of the

jury.

A He is sitting with the two attorneys in the middle with the glasses on.

MR. BUSH: Let the record reflect that the witness has properly identified the defendant.

Q Incidentally, to your knowledge, is Lawrence Rosen the defendant's legal name?

A No, it's not.

Q What is?

A His legal name is Paul Lawrence Rosenrauch.

Q In 1966 in what business was the defendant engaged?

A He was the president of Mr. Hanger, Inc. and its subsidiaries.

Q Did there come a time when you first heard of a concern known as the Progressive Drug Company?

A Yes, there was.

Q When was this?

A Sometime in 1966. I believe it was in the spring.

Q Whatwere the circumstances which led to your acquaintance with this particular firm?

A I was asked to meet with a Henry Hainick and Lawrence Press together with Lawrence Rosen to discuss the

financing of the acquisition of Progressive Drug Company by a company called Pawnee Drug.

Q Did there come a time when Pawnee purchased Progressive?

A Yes, there did.

Q Roughly when was that?

A Sometime shortly thereafter. I believe it was sometime in the middle of 1966. I might be off on my dates.

Q After contemplating,what date do you think it might be?

A It could be sometime -- that is right, it would be around June of 1966 I believe the transaction was closed.

Q Might it refresh your recollection as relating this particular day as to when the firm of Mr. Hanger itself was established?

A This would have been four to five months after the establishment of Mr. Hanger.

Q How was the financing for the purchase of Progressive by Pawnee arranged, to your knowledge?

A It was arranged by Lawrence Rosen with a finance company called Commercial Trading, and the company Pawnee was taken over by a public organization called Twentieth Century Industries.

Q What if anything did the defendant have to do with Progressive once Pawnee had bought it?

A He received for his efforts stock in Pawnee Drug which was then exchanged for stock in Twentieth Century Industries.

Q What if anything or in the way of services did he have to do with the company once it was taken over by Pawnee?

A He acted as a financial adviser and a member of an informal executive committee.

Q What if anything did you have to do with the Progressive Drug Company once it had been taken over by Pawnee?

A Nothing for a period of months, and then I was called in to do some special work.

Q Roughly when was that?

A Sometime in the latter part of the year. I believe around October of '66. It could have been September.

Q In the latter part of the year of 1966 who if anybody had Progressive engaged to be its accountants?

A They had engaged the accounting firm of Futerman & Berylson.

Q Who from that firm, to your knowledge, did the bulk of accounting work, actually go on the premises of

Progressive? 12A

A Milton Gottesman.

Q Did there come a time when you discussed with him the disposition of certain cash proceeds from the company?

A Yes, there was.

Q As a result of that discussion did you have one or more discussions with the defendant and others on the same subject?

A Yes, there was.

Q Roughly when was the first of these particular discussions?

A The first conversation took place the day after I had visited the premises at Progressive Drug and became aware of the cash payments. That took place with Lawrence Rosen the following morning at the offices of Mr. Hanger in Long Island City.

Q In a period of time when would this have been?

A I believe it was either September or October of 1966.

Q Who else, if anybody, was present besides you and the defendant on that occasion?

A At that meeting it was just myself and Mr. Rosen.

Q What was said at that time between the two of

you?

A I told him that the day before I visited the premises of Progressive Drug, that I was very concerned at cash payments that were being taken from COD and cash sales and not being reflected on the books.

I told him that if anybody had found out about it that it might look like the funds were being embezzled. He told me, "Don't worry about it, nobody would find out." I told him he was wrong, that the controller of the company was maintaining a black book with all of the various disbursement dates and to who the moneys went. I told him there was no reason, since they really were rendering services to the company, that they shouldn't be on the payroll.

He said he needed every dime he could get the way his wife was spending money and he could not afford to have the withholding taken out.

I said, Well, that I know there are going to be a few meetings coming up and at least the disbursements should be in the form of a check. That pretty much was the substance of the conversation.

Q What if anything was said as to who was receiving these particular payments?

A I had a list of who was getting the money from

the black book of Goldfinger, and I had discussed with Rosen who was getting the money. Each of five people were getting $100 a week.

Q Who were they?

A Lawrence Rosen, Joseph Abrams, Sam Goldman, Martin Goldman, Martin Goldman and Harry Hainick and Larry Press.

Q How much were these individuals receiving apiece?

A $100 each.

Q Who were Martin and Sam Goldman and what connection if any did they have to the Progressive Drug Company at that time?

A Sam Goldman was the president of Twentieth Century Industries. Martin Goldman was a vice-president and director and the son of Sam Goldman.

Q Who was Joseph Abrams and what connection if any did he have to Progressive?

A Joseph Abrams owned stock from the original transaction in Pawnee Drug and became a stockholder as a result in Twentieth Century Industries. He was a long-time financial adviser to the Goldmans and Twentieth Century.

Q Did you have occasion to actually examine the black book which you referred to of Mr. Goldfinger?

A Yes, I did.

Q I show you a document which has been marked for identification as Government's Exhibit 15, and ask you if that refreshes your recollection as to when these particular payments started and perhaps how long they lasted as well. Does it refresh your recollection?

A Yes, it does.

Q Having your recollection so refreshed, would you state again when it was that you recall these payments to have first commenced?

A March of 1966.

Q Following your initial discussion with the defendant concerning these payments,when was the next discussion, if there was one, that you had with him concerning these matters?

A The next --

Q I will rephrase it. When was the next discussion with anybody that you had concerning these matters?

A The next discussion was with Sam Goldman, Milton Gottesman and Martin Goldman at the home of Martin Goldman.

Q Was the defendant present?

A No, he was not.

Q What was said in that discussion?

MR. HOEY: I object to that, your Honor.

THE COURT: Yes. It seems to me I must sustain

that, Mr. Bush.

MR. BUSH: Your Honor, the Government has a contention with respect to statements made by people other than the defendant who received these payments. I have a brief memorandum which I would submit to you at this time concerning them.

THE COURT: Memorandum or not, I am going to sustain the objection. I will read your memo and change my ruling if I think it is desirable or correct later, but let us move on to something else.

MR. BUSH: I hand it to the Court not only for its pertinency concerning this particular conversation, but as to future conversations of the same nature.

MR. HOEY: May I have a copy of it?

MR. BUSH: Let the record reflect that I am also handing a copy of it to defendant's counsel.

MR. HOEY: Thank you.

Q Following this discussion, when if at all did you then discuss the same matter with the defendant himself?

A Within the next month there was a meeting at the apartment of Arthur Singer, who was the Secretary and counsel to Twentieth Century Industries.

Q Who was present at that meeting?

A Lawrence Rosen, Sam Goldman, Martin Goldman,

Arthur Singer, Henry Hainick, Lawrence Press and myself. Milton Gottesman -- no, I don't believe he did come to that meeting. He could have stopped in for a few minutes.

THE COURT: This meeting was where and when?

THE WITNESS: It was within the next thirty days from my conversation with Rosen at the offices of Mr. Hanger, and it was at the apartment of Arthur Singer.

THE COURT: Thank you.

Q What if anything was said at this particular meeting concerning the payments from Progressive?

A Well, the payments from Progressive were only an incidental part of the meeting, but what was said basically was that I had expressed the concern about the cash payments and with the problems that a number of individuals had that it was not advisable for them to be taking cash out of the business; that it should be in the form of check; that it should be by way of the regular payroll.

They agreed that it would be paid in the form of a check but would not agree that it go on the payroll. One of them said that as far as I am concerned --

MR. HOEY: I object to anything that anybody else said.

THE COURT: Just a moment. As I understand it, Mr. Rosen was present at this meeting?

THE WITNESS: Yes, he was, your Honor.

THE COURT: All right. I will allow it.

MR. HOEY: May your Honor inquire as to whether or not Mr. Rosen participated in this conversation?

THE COURT: I infer that that is what Mr. Bertoli is telling us. He was present during all of this?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q What was said?

A One of them said -- I am not sure if it was Mr. Rosen or not, but one of them said that "as far as I am concerned I am just taking the money and I am going to forget about it as far as reporting it is concerned, and everybody else can do what they want. Nobody is going to be able to prove whether or not we spent the money for entertainment or not." The only other discussion at that meeting with reference to those disbursements was that Rosen volunteered to have Abrams' share made out to him in the form of a check. It was agreed that he would get $200 a week, and that every other week he would pay Abrams his share.

Q What if anything was said concerning the treatment of these payments on the books and records of Progressive?

A I believe there was some mention that it would

be temporarily put into a marketing expense until a later disposition.

Q To your knowledge, were payments of the same nature that we have been discussing made subsequent to this particular meeting at Singer's apartment?

A I believe it was shortly thereafter that all the disbursements were then made by check.

Q Subsequent to this meeting did there come a time when you had a further discussion or discussions with the defendant himself regarding these payments?

A Yes, there was.

Q Approximately when was the first of these subsequent discussions?

A About two months later Eve Abrams had complained to me that she was not receiving --

Q Tell us when the next discussion was with the defendant himself?

A It was about two months after the meeting of Arthur Singer's apartment.

Q Where did this take place?

A In the offices of Mr. Hanger in Long Island City.

Q Who if anybody else was present?

A Just Lawrence Rosen and myself.

Q What was said between you and Mr. Rosen on that occasion?

A I told him that Eve Abrams had approached me and complained that she was not receiving her $200 every other week and that, in addition, when she did get a check that he was refusing to endorse the back and she had to forge his name. He told me that she could go to hell, that in the event there was a problem later on with reference to taxes that he didn't want to be on record that he received all of the money; let her worry about her problem.

Q Who was Eve Abrams?

A Eve Abrams was the wife of Joseph Abrams.

Q Have you ever heard of a man named Abe Katz?

A Yes, I did.

Q Did he have any connection with the defendant during the period from 1966 to 1968?

A Yes, he was a runner.

Q When you say runner, that would mean --

A He was basically what I would term a "go for": "go for" this, "go for" that.

Q A messenger of some sort?

A He would do whatever he wanted him to do.

Q Did there come a time when you filled out the defendant's 1966 tax return?

A Yes, there was.

Q Mr. Bertoli, why don't you continue to face the jury, so the members of the jury can hear your testimony.

I show you what has been admitted into evidence as --

THE COURT: What is the number of this exhibit?

MR. BUSH: 1.

THE COURT: That has been received.

MR. BUSH: It was not marked at the time it was received.

THE COURT: All right.

Q Beginning again, I show you what has been received in evidence as Government's Exhibit 1 and ask you if you can identify that particular document.

A Yes, I can.

Q What is it?

A This is a Form 1040 U.S. individual income tax return for the year 1966 for Lawrence and Dory Rosen.

Q What if anything did you have to do for the preparation of that particular return?

A I had prepared the basic information that was contained in this return.

Q Did you prepare the return itself? Did you fill it in?

A No, this was typed from information that I had

22A

provided.

Q I show you what has been received in evidence as Government's Exhibit 9 and ask you if you can identify that particular document.

A Yes, this is the employer's copy of a 1966 withholding statement.

Q What if anything did you have to do with that particular document?

A I was responsible for its preparation.

Q In the course of providing the information for the tax return what if anything did you do with the document?

A Well, this document together with the other information contained what was given to Rosen.

Q I show you what has been marked for identification as Government's Exhibit 9A and ask if you can identify that particular document.

A Yes, I can. This is a Form 1099 for the year 1966 showing disbursement of $7800 from Mr. Hanger to Lawrence Rosen.

Q What if anything did you do with respect to that document in connection with providing the information -- what if anything did you do with respect to that particular document as it bears a relationship to the tax return?

A Well, the amount was reflected on Form 2106

attached to the tax return. And this document was given to Rosen.

MR. BUSH: I would offer at this time Government Exhibit 9A into evidence.

MR. HOEY: May I have a voir dire on this?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. HOEY:

Q Mr. Bertoli, you prepared this U.S. information return for calendar year 1966, is that correct?

A I was responsible for its preparation, yes.

Q Who prepared it?

A It would have been typed by either -- one of the girls in the office.

Q I am interested in the underlying information. Did you secure that?

A Yes.

Q You are the one that secured that information from where?

A From the records of Mr. Hanger. Most of the corporate minutes reflect it.

Q The records indicate there that the sum that is set forth there is listed in the corporate records and minutes of Mr. Hanger; is that what you are saying?

A Yes.

MR. BUSH: I would object at this time, your Honor. I think that the scope of the voir dire is exceeding the question of the admissibility of the document.

THE COURT: He already answered it. I will let it stand.

The answer is yes?

THE WITNESS: Yes.

MR. HOEY: No further questions.

THE COURT: Do you object to the proffered Exhibit 9A for identification?

MR. HOEY: No, I do not, your Honor.

(Government Exhibit 9A received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. BUSH:

Q Placing the 1966 tax return and the two forms in front of you, I would ask you from what source did you obtain the information actually contained in the tax return itself?

A From Lawrence Rosen.

Q Directing your attention to the line 5 in that form, what businesswas the source of the wages which appear there?

A Mr. Hanger, Inc.

Q Referring you to a Form 2106, is such a form attached to the return?

A Yes, there is.

Q For what purpose is that particular form used?

A To reflect -- it's a statement of employee business expenses where you would report on it any expenses and the reimbursements by the employer.

Q What is the relationship between that particular form and the Form 1099 which is Government's Exhibit 9A?

A The amount reflected in this Form 1099 as being disbursed by Mr. Hanger for unreimbursed expenses is reflected on line 6 of the Form 2106 showing that employer reimbursements for unreimbursed expenses or unaccountable expenses was $7800.

Q Perhaps we should find out what a Form 1099 is as well.

A A Form 1099 is a U.S. information return. This is a form used for payments to an individual not subject to withholding.

Q Directing your attention to the W2 form, which is Exhibit 9, what if any relationship does it bear to the tax return?

A Which form?

Q The W2 form which is Government Exhibit 9A.

A That reflects wages and subject to withholding and the withholding taxes and Social SEcurity taxes deducted, and that is reflected on page 1 of Form 1040, in this case item No. 5.

Q Turning your attention to a new matter, what type of concern was Mr. Hanger in 1966?

A Mr. Hanger was a manufacturer of disposable plastic hangers.

Q Where was it located?

A It had its manufacturing plant in Long Island City. A sales office in New York City also.

Q What was the influence of the defendant over its operations?

A He ran it completely. It was a one-man show.

Q Turning to the winter of 1966 and 1967, did Mr. Hanger then have a su bsidiary which we have referred to as Intercontinental?

A Yes, there was.

Q Did there come a time when you had a discussion or several discussions with the defendant concerning certain payments from that particular firm to himself and other individuals?

A Yes, there was.

Q Approximately when was the first discussion of

this nature?

A Sometime in 1967, I believe, or sometime around March or April.

Q Where did this discussion take place?

A In the offices of Mr. Hanger in Long Island City.

Q Who else, if anybody, was present?

A At that meeting there was Lawrence Rosen and myself. I believe Ben Zuckerman may have come in towards the latter part of the meeting.

Q Who was Ben Zuckerman?

A Ben Zuckerman is related to Larry Rosen. They have been business partners for a long time and an officer of Mr. Hanger.

Q What was said in this initial discussion with Mr. Zuckerman or with Mr. Rosen, rather; I am sorry.

A Rosen had told me that he felt he was entitled to more money; that he was doing a considerable amount of work; that the company had grown. And he wanted to get more money for his work. But he did not want to receive the money directly from Mr. Hanger itself, because he felt that the factor would be concerned and, in addition, he did not want Joe Abrams to know that he was drawing more money out of the corporation.

Q What is a factor?

A They were a finance company who loans money on accounts receivable.

Q What role if any did Joseph Abrams play in this particular concern at this time?

A He was a major shareholder in the firm. His secretary was a bookkeeper for Mr. Hanger and had access to all the documents, and his wife was receiving money from Mr. Hanger.

Q What if anything else was said in this particular discussion?

A He asked me how he might go about doing it. I told him since Intercontinental Hangers was now getting stronger, it was about to form or had just formed a joint venture in Canada, that that was the best company to draw money from. As a result he told me, "Fine, from now on every week I want to draw in the form of commissions or whatever you want to call it $250 a week. In addition, " he said, "you are entitled to getting more money and you should draw $150 a week."

Q Let me get these exhibits out of the way, but before I do let me ask you just one or two further questions.

Referring back to the 1966 tax return, what if anything was said between you and the defendant concerning

the payments that he was receiving from Progressive and reporting them in that particular return?

A I told him they should be reported, and if he doesn't report them along with other income that isn't reflected here, that I was not going to sign the tax return as I did in the previous year; that if he wanted to go ahead and file it, that was his business.

Q What if anything did he say to you?

A He said, "Fine, do as you please. As far as I am concerned, that is all I am reporting."

Q Did you in fact sign that return as a preparer?

A No, I did not.

THE COURT: You are referring to Government's Exhibit 1?

MR. BUSH: Government Exhibit 1, the tax return for 1966.

THE COURT: All right.

Q Returning to Intercontinental Hanger, did there come a time, to your knowledge, when these payments that you have been discussing with the defendant began to be made?

A Yes, I believe the first check was made out that week.

Q In point of time what date would that have been, roughly?

A I believe it was the spring of 1967. I really don't remember the specific date.

Q At that time was anyone else associated with Mr. Hanger also being paid or receiving payments from Intercontinental?

A Yes, Carl Birnbach was receiving money at that time.

Q When he started receiving such money -- when did he start receiving such money?

A 1966.

THE COURT: Who was this?

THE WITNESS: Carl Birnbach.

THE COURT: He was receiving payments from Intercontinental Hanger?

THE WITNESS: Yes, your Honor.

THE COURT: Beginning in 1966?

THE WITNESS: Correct.

Q What if any role did he play in Mr. Hanger?

A He was a salesman and marketing manager. He did whatever Rosen told him to do in the area of sales.

Q Is he alive today?

A No, he is dead.

Q After the payments started, did there come a time when you had a further discussion or discussions with the

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defendant concerning him?

A Yes, there was.

Q When was the first of these discussions, roughly?

A About two months later he called Ben Zuckerman into the office and we discussed --

Q Let me interrupt you for a moment. When you say "we," who was present?

A Lawrence Rosen, myself, and Ben Zuckerman.

Q Where was this?

A This was in the office of Mr. Hanger in Long ISland City.

Q What was said then and who said it?

A Larry said that it wasn't right, that he and I were drawing more money when Ben was working just as hard as we were. And he was responsible for building the sales and he was entitled to getting more money also, and from that week on he should draw money from Intercontinental Hangers the same way we were.

Q What if anything was said with respect to the amounts which he was to draw?

A I believe he was to get either $100 or $150 a week.

Q Did there come a time when such payments were actually commenced?

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A Yes, that week.

Q Roughly, when was that?

A Sometime I believe in the summer of 1967.

Q Following that particular discussion, did you have another discussion or discussions with the defendant concerning the same payments?

A Yes, there was.

Q How many,roughly, were there altogether?

A There were about four or five additional discussions.

Q Starting with the first of these, when was it?

A The first one was about a month after the meeting with Zuckerman. He wanted an adjustment of Zuckerman's check.

Q Let us try to place it. Where was it and who was there?

A It was in the offices of Mr. Hanger in Long Island City and this would have been some time, I believe, in July or August. There was a problem that he had with Zuckerman --

Q Let us just say what was said in the discussions.

A He told me to increase Zuckerman's salary by an amount.

Q Roughly how much?

A I think it was only $10 a week or $15 a week,

something like that.

Q When was the next discussion that you had with the defendant concerning these same payments?

A The next discussion I believe was sometime in March of 1968.

Q Where was this discussion?

A In the offices of Mr. Hanger in Long Island City.

Q Who was there?

A Just Lawrence Rosen and myself.

Q What was said on that occasion?

A He told me that things were going along fine; now that there was a merger pending with Yankee Plastics it looked like all of the financial problems of the past were over and from here on out the company was going to be very profitable, and therefore he was entitled to getting a substantial amount more and his salary should be increased at Mr. Hanger by, I believe, $300 a week. I think he went up to $500 a week at that point.

Q When was this point?

A It would have been March of 1968.

Q How long did these particular payments continue altogether?

A Until probably only about a month or two later. He said he wanted more money and that he was entitled to

$800 or $1000 -- I think $800 a week at that point.

Q How long was he paid the $800 a week?

A Until the time I left. He could have been paid after that as well. At least until the time I left.

MR. MUSOFF: If your Honor please, I fail to see the relevancy of these questions. They all relate to periods subsequent to the indictment years.

THE COURT: Not all, but the last few conversations.

MR. MUSOFF: I move they be stricken from the record, your Honor.

THE COURT: I disagree with this. I am not going to do that. I think they have a certain amount of relevance.

Gentlemen, while we are on the subject, I had thought that you, Mr. Hoey, were going to be handling this. I think only one lawyer should be handling the case. I don't want to be rude to either you or Mr. Musoff, but it ought to be one or the other, not both. Would you think about that one?

MR. HOEY: We will.

THE COURT: Let us go ahead, Mr. Bush.

Q Beginning with the first of these payments, would you describe what the amounts were and how long that particular amount roughly was paid to the defendant before

the next amount began, and so on and so forth, up until the point when you left the company?

MR. HOEY: May we have a time?

THE COURT: Yes. If I may say so, Mr. Bush, to the extent I understand that question, I think it has already been asked and answered. Therefore, if you really want to ask something here, I think you ought to rephrase it so the defense and the jury and the judge understand it.

Q During the course of 1967 what was the amount of the payments which Mr. Rosen was receiving?

A Well, it would have been for that year something like --

Q Each payment.

A Each payment was $250 a week.

MR. HOEY: I don't know what we are talking about, whether this is from Mr. Hanger or Intercontinental or what.

THE COURT: I think you mean, don't you, Mr. Bertoli, Mr. Intercontinental, the Canadian subsidiary?

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Bush, let us get back on the track here.

Q I show you a document which has been marked for identification as Government Exhibit 12 and ask you what

that particular document or collection of documents is.

A These are checks drawn by Intercontinental Hangers, Ltd., on the Toronto Dominion Bank, most of which are made out to Lawrence Rosen.

Q Would you review the checks there and tell me for what period of time those checks cover?

A The first one here is dated March 3, 1967, and the last one is December 27, 1967.

Q What relationship if any do these checks bear to the Intercontinental payments which we have been discussing?

A These are the checks we were talking about.

Q How can you identify them as the particular checks?

A I signed them.

Q In what capacity?

A As the Assistant Secretary. And I prepared them.

Q I show you another document or actually a collection of documents which has been marked for identification as Government's Exhibit 12A, and ask if you can identify those particular documents.

A These are checks drawn on the Toronto Dominion Bank by Intercontinental Hangers, Ltd., again most of whom were made out to Lawrence Rosen from the period January 3,

1968, to May 27, 1968.

Q To your knowledge, what payments if any were made by Intercontinental Hangers on behalf of Mr. Rosen other than checks made directly to him?

A Well, the company had paid for his home telephone bill.

MR. HOEY: Are we now talking about Intercontinental?

THE WITNESS: Intercontinental, correct.

Here is a check for his moving expenses from New York City to Connecticut.

MR. BUSH: Let the record reflect that this is the check that is on the third page of the document that has been marked as Government Exhibit 12A.

MR. HOEY: I object to that, your Honor. That is outside the scope of this indictment.

THE COURT: I am not sure I quite agree.

Go ahead.

Q To the order of whom is that particular check made?

A It's made out to Day, Meyer, Murray, and Young Corporation in the amount of U.S. $402.63.

Q Are there any checks similar to that check in that group of documents, either to that particular concern

or another concern which were made on behalf of Mr. Rosen?

A Yes, there is a check here made out to the Michigan Avenue National Bank for $458.35, which is for an installment payment on a personal loan of Lawrence Rosen from the Michigan Avenue National Bank.

Q Showing you what has been marked as Government Exhibits 12 and 12A, I ask you if there are any checks in there which did not either go personally directly to Mr. Rosen or were made out for his benefit.

Why don't you take a moment to examine it, Mr. Bertoli.

Have you completed your examination of those checks, Mr. Bertoli?

A Yes, I have.

Q What is the result of that examination?

A All of the checks,with the exception of two, are made out to Lawrence Rosen.

Q Were those the two to which we just made reference?

A Yes.

MR. BUSH: I would offer at this time Government's Exhibits 12 and 12A into evidence.

MR. HOEY: I have no objection to 12. I do specifically object to 12A, since they deal with the year

1968, which is not the subject of this indictment.

THE COURT: In the direct sense you are quite correct in regard to those checks dated 1968. However, I am allowing them in so that the jury can use them to evaluate the important issues of knowledge and intent which are presented by the charges in our indictment. So your objection to 12A is overruled and both proffered exhibits will be received.

(Government Exhibits 12 and 12A received in evidence.)

Q Did there come a time when the original Mr. Hanger, so to speak, merged with another firm?

A Yes.

Q When was that?

A March 15, 1968, Mr. Hanger was merged into Yankee Plastics, Inc.

Q What was Yankee Plastics, Inc., at that time? What type of business was it?

A It was in the same business of manufacture of plastic disposable hangers.

Q What form did the merger itself take?

A Yankee Plastics issued its stock for the assets of Mr. Hanger.

Q What was to be the name of the merged concern?

A Yankee Plastics, Inc.

Q Was Intercontinental among those assets which were going to be transferred in the merger?

A No, it was not.

Q I show you a document which has been marked for identification as Government Exhibit 10 and ask if you can identify that particular document.

A Yes. This is the merger agreement between Yankee Plastics and Mr. Hanger.

Q I show you another document which has been marked for identification as Government's Exhibit 11 and ask if you can identify that particular document.

A Yes. This is the bill of sale called for in the merger agreement of the assets of Mr. Hanger to Yankee Plastics.

MR. BUSH: I would offer into evidence Government's Exhibits 10 and 11.

MR. HOEY: I have no objection to it going in, your Honor.

(Government Exhibits 10 and 11 received in evidence.)

MR. BUSH: At this time, your Honor, I think the Government would contend that there has been sufficient connection made on the grounds of the area of relevancy with

this particular letter, and I would ask permission to read the text of that letter to the members of the jury without submitting the document itself.

THE COURT: I am not sure I agree with you, but in any event before we even get to that question may I ask, do you have any further direct of Mr. Bertoli?

MR. BUSH: No, I don't, but I would seek the opportunity to read --

THE COURT: I understand. I am not going to permit that yet. I want to think about that a bit more, if you don't mind.

MR. BUSH: Very well.

THE COURT: Mr. Hoey, apparently that concludes the Government's direct. I take it the Government is withdrawing their effort to elicit conversations at those early meetings where Mr. Rosen, according to Mr. Bertoli's recollection, was not present?

MR. BUSH: I withdraw it with respect to this witness, but advising the Court that there will be similar occurrences with respect to other witnesses, and my withdrawal here does not mean that I have changed our position on the matter.

THE COURT: All right. We will face any others where you face this directly as it comes, when it comes.

Mr. Hoey.

MR. HOEY: Your Honor, I have been furnished some papers pursuant to 3500. If I may approach the bench and have a side bar with counsel, I think we have a problem.

THE COURT: All right.

(At the side bar)

THE COURT: What is your problem?

MR. HOEY: I have been furnished certain papers from 3501 through 3501M. I do know that Mr. Bertoli has testified in several cases as a witness for the Government and in which Mr. Rosen has been mentioned by Mr. Bertoli, and that has not been furnished to me. I am inquiring at this point as to whether Mr. Bertoli has testified at the grand jury on this or any other matters dealing with the same situation. In other words, I believe that I received insufficient 3500 material with regard to Mr. Bertoli. If things about which I have been informed during the course of my investigation are true --

MR. BUSH: If your Honor will give me one second, I will get my notes and give a complete reply to that.

THE COURT: Certainly.

MR. BUSH: I know from my own knowledge that Mr. Bertoli has testified at the case entitled United States v. Dellacroce and others. It is my belief that that testimony

is not relevant to this particular trial. Moreover, of course, his testimony given at any public trial would be equally available to the defendants.

Secondly, he has testified before a grand jury in connection with that case. It again is my belief that that particular testiony is not relevant.

I do have, I believe, the text of the grand jury testimony here today with me, and if your Honor wishes I will provide it to you so that you may examine it in camera.

THE COURT: I wish you would on the grand jury minutes. As to the trial minutes, I don't quite understand why the defense could not have got those. Those are publicly available. That case is over with. So I am not going to concern myself with that.

I would like to see the grand jury minutes, however.

MR. BUSH: Let me check my notes again to make sure I have them here.

Here it is.

THE COURT: We will mark it.

What was the last number?

MR. HOEY: "M" as in Mary, I think, your Honor.

MR. BUSH: I can tell you from looking at this.

Let us have that marked as 3501N.

THE COURT: All right, I put it in my own handwriting. I will read those and report to you gentlemen in the morning.

MR. HOEY: May I inquire as to whether or not Mr. Bertoli testified in the grand jury in this case?

MR. BUSH: No, he did not.

THE COURT: No grand jury testimony by Mr. Bertoli in our case?

MR. BUSH: No, sir.

THE COURT: Let us go ahead, Mr. Hoey. As you know, I am going to quit at 4, so you are not under any heavy obligation to complete this by 4 o'clock. You have ample to work with until then. Let us go ahead.

(In open court)

CROSS EXAMINATION

BY MR. HOEY:

Q. Mr. Bertoli, you are a certified public accountant?

A. Correct.

Q. For how long have you been certified?

A. Since, I believe, 1958.

Q. Have you practiced that profession since 1958?

A. Since 1954.

Q. Have you been engaged in outside businesses?

A. Yes, I have.

Q. Have you maintained an office for the practice of accountancy?

A. Yes, I have.

Q. Where?

A. My first office?

Q. Yes.

A. My first office was 7520 Bergenline Avenue in North Bergen.

Q. In New Jersey?

A. Yes, and also at 20 Vesey Street in New York.

Q. Were you a practicing accountant when you first met Mr. Rosen?

A. Yes, I was.

Q. Where did you first meet him?

A. I met him at the offices of Yankee Plastics when he was connected with that corporation some time in 1963, I believe.

Q. Where were they located?

A. They were located, I believe it was on 34th Street in New York City.

Q. Were you the acting accountant for that company at that time?

A. No, I was not.

Q. Were you acting as a financial adviser?

A. I did do some work at that time. I helped prepare the annual report which was the first report that came out.

Q. Was Yankee Plastics a public comapny that was required to file reports?

A. At that time, no, it was a company that was exempt from registration. It was a Regulation A.

Q. Did there come a time when it went public?

A. Excuse me?

Q. Did there come a time when it was required to file --

MR. BUSH: I object to the relevancy of these questions. They all antedate 1964 or 1965 when Mr. Hanger was incorporated, and bear no relevance or no connection

to the direct questions.

THE COURT: I certainly would agree with the latter, and I don't quite understand what they have to do with our case.

MR. HOEY: I am coming down to his relationship with Mr. Rosen.

THE COURT: All right.

Q. Did you work with Mr. Rosen prior to the formation of Mr. Hanger?

A. Only in the -- other than for a short period of time in 1963, only in connection with the formation of Mr. Hanger.

Q. Were you part of the formation of Mr. Hanger?

A. Yes, sir.

Q. Were you employed by Mr. Hanger from the time it was formed?

A. Yes, I was.

Q. In what capacity were you employed by them?

A. Originally with no title, although I functioned as the controller of the company.

Q. How many people were in it at that time, you, Mr. Rosen and who else?

A. On the date of incorporation?

Q. At the time it was formed. I am not interested in

corporations; the beginning of the corporation, Mr. Hanger.

A. At the time it was formed there was only about five employees.

Q. And was Rosen one of them?

A. Yes.

Q. Ben Zuckerman?

A. Yes.

Q. And you were one of them?

A. Correct.

Q. Were you the three principals at that point?

A. No, there was a Bernard Meyers who was the treasurer and he was engaged in setting up the plant. There was --

Q. YOu and Rosen were working together at that point; is that correct?

A. Yes.

Q. At that point, Mr. Bertoli, Hanger was engaged in what, the manufacture of plastic disposable hangers?

A. It didn't have any molds yet. We were just preparing to form the business.

Q. Did there come a time when it did get into production?

A. Yes.

Q. Did there come a time when there was a discussion concerning Progressive Drug?

A. Yes, there was.

Q. When did that occur?

A. That is interesting. It took place about five months -- this would have been 1965. My prior testimony was wrong in time. The thing that refreshes me was about five months prior to Joseph Abrams going to jail in March '66.

Q. He went to jail in March '66?

A. I believe so, yes.

Q. In 1965, Progressive Drug was discussed in Mr. Hanger; is that correct?

A. What month was that?

Q. In 1965.

A. Correct, right.

Q. Did there come a time when it was discussed with you as to whether or not it would be a good investment for people to become interested in Progressive Drug?

A. No, I was just asked to arrange for the financing.

Q. Did you arrange for the financing?

A. I had arranged for financing but it was not accepted.

Q. With whom did you arrange the financing?

A. Commercial Credit Corporation and with L.F.Dommerich.

Q During that time, did you have contact with Harry Hcinick and Larry Press?

A Yes.

Q Would this still be in 1965?

A Correct.

Q Were they the principals in Progressive Drug at that point?

A Were they principals?

Q Were they operating Progressive Drug?

A Yes, they were.

Q Had they purchased Progressive Drug at that time, or where they in the process of doing it?

A When it was first introduced to them, they were attempting to arrange for the financing in order to purchase it.

Q Who introduced you to them for the first time?

A Joseph Abrams.

Q That was in 1965, correct?

A Yes.

Q Did there come a time when financing was secured for Progressive Drug?

A Yes, there was.

Q Who secured the financing for Progressive?

A Lawrence Rosen.

Q. Through whom did he secure the financing for Progressive Drug?

A. Commercial Trading Corporation.

Q. That is a factoring outfit; is that correct?

A. Yes, it is.

Q. I think you told us a factoring outfit is an outfit that would supply capital for businesses?

A. Right, financing receivables and so forth.

Q. Did you in any way participate in the operation or the setting up of the records of Progressive Drug?

A. At what time?

Q. At any point in the first six months?

A. In the first six months, no.

Q. At any time later on did you, sir?

A. Yes, I did.

Q. Did you have anything to do with the take-over of the stock of Progressive Drug by 20th Century?

A. I was involved in the negotiations from time to time, yes, I was.

Q. Did you make an analysis of the records of Progressive Drug for 20th Century?

A. No, I did not.

Q. Did there come a time, sir, when Progressive Drug became a part of a solely owned subsidiary of 20th Century?

A. Through Pawnee Drug, yes, there was.

Q. What is Pawnee Drug, an intervening corporation?

A. Yes.

Q. What happened was Progressive sold all its stock to Pawnee and then Pawnee in turn sold all its stock to 20th Century; is that what happened?

A. That is exactly correct.

Q. When did that occur?

A. I believe this was -- the closing of all of the financing, I believe, was March '66. That is my recollection.

Q. March of 1966?

A. It could have been a month earlier, but in that range.

Q. And in that period was Mr. Rosen still employed by Mr. Hanger?

A. Yes, he was.

Q. Was Hanger now a stockholder in 20th Century which owned the entire stock of Progressive Drug?

A. No, it was not.

Q. Did it become a stockholder in 20th Century?

A. Mr. Hanger in 20th Century, not to my knowledge.

Q. Do you know whether or not there was any stock issued for Mr. Rosen's services for having secured the financing through Commercial Trading Corporation?

A. Yes. He got his share of Pawnee Drug stock in return for arranging for the financing, and in turn got 20th Century stock, not Mr. Hanger stock.

Q. Did Mr. Rosen get the stock on behalf of Mr. Hanger in 20th Century?

A. No, he did not, no way. His stock was in the name of a nominee, in back Ben Zuckerman, not even in his own name.

Q. You are now saying that Mr. Rosen got stock in the name of Ben Zuckerman in 20th Century?

A. Yes, of course.

Q. Was that stock turned over to Mr. Hanger?

A. No way.

Q. Do you know whether or not Mr. Rosen rendered any services after the take-over of 20th Century and Progressive Drug to Progressive Drug?

A. Sure, he did.

Q. Services to Progressive Drug?

A. Yes.

Q. What type services did he render?

A. He would meet with Henry Hoinick and Lawrence Press as a member of their executive committee, and they would argue about the affairs of the business.

Q. And that is all?

A. Yes.

Q. You know of nothing else?

A. No. He didn't have the time.

Q. Pardon?

A. He didn't have the time.

Q. You don't know whether he met with any prospective suppliers to Progressive Drug?

A. I would --

Q. Do you know?

A. I don't know if he did.

Q. Do you know whether or not he made any trips outside the State of New York on behalf of Progressive Drug?

A. That I know he did not.

Q. You know that as a fact?

A. Yes, right.

Q. Do you know whether or not he expended any of his moneys on behalf of the business of Progressive Drug?

A. There is no way that I would be able to determine what he was doing out of his own pocket.

Q. For how long had you known Mr. Hoinick?

A. The first time I met Henry Hoinick I believe was in connection with the Progressive Drug matter.

Q. How about Mr. Press?

A. That was the first time I met him. I could have

met Hoinick earlier. I might have met him perhaps a year earlier.

Q Through Mr. Abrams also?

A Correct.

Q Were you ever paid any money by Progressive Drug?

A Yes, I was.

Q On more than one occasion?

A One occasion.

Q How much were you paid on that one occasion?

A I believe it was $2,000.

Q Did you render financial assistance to them, or did you render accounting assistance to them?

A A combination of the two. I originally had prepared the projections for the company. I reviewed the accountant's work papers for the fiscal year end.

Q What was the fiscal year end?

A I believe it was September 30th.

Q Of what year?

A In that case it would have been September 30, '66. I had sat in on some of the executive committee meetings and did make a recommendation to 20th Century that they do make a management change.

Q Was this at the time that Futerman & Berylson were retained as accountants?

A. Correct.

Q. Did you work with them, Mr. Bertoli?

A. I did go over some of their work, yes,correct.

Q. Did you assist them in the preparation of the financial report as of September 30, 1966?

A. No, but the basic material that went into the report I did review with them. They were adjusting journal entries.

Q. Did they have their own independent controller at Progressive Drug?

A. Did who?

Q. Did Progressive Drug have their own independent controller?

A. Yes, they did.

Q. When did you first learn that there were cash payments being made to Mr. Rosen by Progressive Drug?

A. I believe it was probably in September or October of 1966. I had seen some cash coming back and forth, but I didn't exactly know what it was for.

Q. Coming back and forth to where?

A. From Progressive Drug to Mr. Hanger.

Q. Who would bring the cash in?

A. Abe Katz was delivering the money either to Pearl Levine or to Lawrence Rosen.

Q. And that was in your office at Mr. Hanger?

A. I didn't have an office. I either shared space with Mr. Rosen's office or in Pearl Levine's office.

Q. On how many occasions did you see Mr. Katz bringing money to give Mr. Rosen money?

A. At least two occasions.

Q. When were they?

A. It would have been some time in the summer of 1966. It could have been the spring.

Q. Could you be more explicit than that?

A. No.

Q. It was either the spring or summer of 1966?

A. Yes.

THE COURT: Would you like to make this the end of the day?

MR. HOEY: Yes, I would like to review some of the material I received.

THE COURT: As I told counsel, although our storm doesn't seem to be very significant now and in the immediate vicinity of the building, I do know that some of you live a fair amount of distance away, and I am going to suspend earlier than otherwise therefore, in case that is the fact, that you live in an area where there is more snow than Foley Square.

Normally we would work until 4:30 unless otherwise

indicated, and we start at 10 o'clock. Without any further ado I say goodbye to you and ask that you return to your jury room a minute or two before 10. As you have learned, if any one of you is late, the rest of us have to wait.

THE FOREMAN: I apologize.

THE COURT: I accept that apology.

As you know, we haven't finished the case or the Government's case. My best advice to you is to put the case out of your minds. Don't even think about it or talk about it with your friends and loved ones. It's really your business and nobody else's.

We will see you tomorrow at 10 o'clock.

(The jury left the courtroom.)

THE COURT: Gentlemen, I have read what was marked during the side-bar conference, Government's 3501-0, that being, of course, the transcript of the grand jury minutes of Mr. Bertoli, not in this case but in the case of United States vs. Aniello DelCroce. Those minutes, it is true, do refer to the name of the defendant. They refer to Mr. Hanger and Yankee Plastics, but as I read them, they are totally unrelated to this case and totally unrelated to the testimony of Mr. Bertoli on direct.

Therefore, I think the Government counsel, Mr. Bush,

is correct in arguing that these materials just described need not be turned over to the defense in our case; so I am returning these to you, Mr. Bush.

MR. BUSH: Might I just correct one thing for the record? I think that I was confused when we handed this to you, and subsequently we referred to it as 3501-N. I think your Honor actually I wrote N over O, just to keep the documentation correct.

THE COURT: That is right. You are correct.

The other matter is this, I don't suppose you would have a copy of Government's 8A, the redacted copy of the March 26, 1969 letter, I think it is?

MR. BUSH: I don't know whether I have an extra copy of the thing. Might I suggest that I give you 8, which is the full letter, or leave 8A with you?

THE COURT: I don't want to assume that heavy responsibility. Let me borrow 8 for identification. That will serve my purposes.

MR. BUSH: Very well.

THE COURT: I will see you gentlemen tomorrow at 10 o'clock.

MR. HOEY: In planning on the defense of this case, your Honor, it would be our understanding that Mr. Musoff would take the accounting witnesses, and I would take the

other type witnesses.

THE COURT: That is fine. I don't object to that. I am looking to you and all of a sudden I hear somebody else. YOu certainly can divide witnesses; that is fine.

MR. HOEY: That is all we want, your Honor.

THE COURT: Surely.

(Trial adjourned to Tuesday, February 26, 1974, at 10 :00 a.m.)

UNITED STATES OF AMERICA

vs. 73 CR 408

PAUL LAWRENCE ROSENRAUCH

February 26, 1974
10:15 a.m.

(In open court - jury not present.)

THE COURT: Gentlemen, our Juror No. 4 , Mrs. Gibbs, is still, as far as I know, not here. I don't know quite how to account for that on a lovely day like this we seem to be plagued so far by juror lateness.

While she is not here, let us take up this Exhibit 8 or 8-A for Identification as the redacted copy is known.

First of all, Mr. Bush, I would like to know what portion of this is it that you think is relevent? I think I know what you think but I believe I am entitled to know exactly what you think rather than guessing.

MR. BUSH: Well, I think the first portion is introductory and explains to a degree the sense of the letter and why it was written.

THE COURT: Yes.

MR. BUSH: Turning to the second page, I believe specifically that the last paragraph refers to a sum of $5,000 which the defendant says that he received from Progressive in payment for certain consulting work that he rendered to the

company. That is, in fact, the sum which the Government now claims was not reported on his 1966 and 1967 tax returns, and the sum that for 1966 it claims that he attempted to evade taxes and, in part, also for the same reason in 1967.

Directing my attention to some discussion in the preceding paragraph about a figure of $36,000, this particular figure refers to the amount that the defendant received for his Twentieth Century stock that he got as a finder's fee, so to speak, for arranging the purchase by Twentieth Century through the medium of Pawnee Drug Company the purchase of Progressive Drug Company.

He states here, I believe, that this sum was ultimately turned over to Mr. Hanger as income to that particular company and as your Honor will recall, I believe that this subject did come up in the cross examination of Mr. Bertoli and is likely to come up again during the course of the trial.

So it's basically those two paragraphs with the preceding material which states in substance what he did for Progressive Drug Company. The remainder of the letter I think has been basically redacted with the exception of a small portion on Page 3 that is in keeping with the material that preceded that in Pages 1 and 2.

THE COURT: Well, now, Mr. Hoey, what is it that you say is prejudicial about this?

MR. HOEY: Your Honor, as far as the first page is concerned, your Honor, I think that that is prejudicial because the first part is talking about the New York State Investigation Committee. Second, they are talking about clandestine payments.

THE COURT: This is a case where we have a dearth of copies. May I see 8-A?

MR. BUSH: I might point out for the record the first paragraph has been taken out on a 8-A.

THE COURT: The first paragraph in the redacted exhibit known as 8-A for identification is removed quite properly, in my judgment. That would be prejudicial, but the rest I am a little at a loss to understand you.

MR. HOEY: We are talking about clandestine payments on a Wall Street Journal report, the second line.

We are talking about a Twentieth Century affiliate. There has been no testimony on here, and I don't think that they can in any way show that there is anything other than a stock relationship.

THE COURT: That is not prejudicial. These are the words of your client. I don't quite follow that. It may well be that a lot of this material is not factual.

As a matter of fact, the Government, as you and I will know, contends that a lot of this is not factual but that doesn't mean it's prejudicial to Mr. Rosen.

MR. HOEY: In that I agree. Of course, the letter was actually never sent, your Honor. That is another item.

THE COURT: Never sent?

MR. HOEY: Never sent to Mr. Curran.

THE COURT: That I don't know. All I know is that --

MR. HOEY: Mr. Greenberg said he received a copy of it.

THE COURT: Right.

MR. HOEY: That is all.

THE COURT: Well, does the Government agree it was never sent?

MR. BUSH: As far as we can ascertain it wasn't sent to Mr. Curran but it was presented by the defendant to Mr. Greenberg and I am not sure --

THE COURT: Mr. Hoey and I are not disputing that. I am asking you about quite a different problem, Mr. Bush.

Was it ever sent to its addressee?

MR. BUSH: To my knowledge, Mr. Curran does not recall ever seeing it and the files of the State Investigation's Commission does not have a copy of it. Beyond that I cannot say that it was not sent.

THE COURT: Anything else, Mr. Hoey?

MR. HOEY: I, of course, disagree with some of the

language in there but that is something -- this statement of Mr. Bush that this was a fee to Mr. Rosen is inaccurate because the records of Progressive Drug, as Mr. Bush should know, indicate that the nominee of Mr. Hanger was Mr. Benjamin Zuckerman who was, I believe, then the president of Mr. Hanger and it was at all times, for the paper and sums of money, in possession of Mr. Hanger rather than of the individual.

THE COURT: That may well be. Again, as I said, but that really doesn't enter into it, as I see it. Your client is able to show that certain of these facts that he put in this letter are not true now, and he will have the right to do that through such methods of proof as you and he deem fit. But what I am trying to get at is the prejudice point.

I'm inclined, having heard Mr. Bertoli now, to permit the Government to put this in. However, it will only be in the redacted copy, that is 8-A for Identification and further than that, Mr. Bush, I think you should state that either you stipulate with the defense that this letter was never sent to its addressee, as a matter of fact, or that you stipulate or represent to the jury at the time you bring this to their attention, that Government has no evidence that even Mr. Rosen nor anyone on his behalf

ever delivered or mailed it to the addressee.

MR. BUSH: If Mr. Hoey wants to stipulate that it was never sent to Mr. Curran I have no problem stipulating to that fact.

THE COURT: I gather that is his position.

MR. HOEY: My position is that it was never delivered either by hand or by the United State Post Office or by any other means to Mr. Curran and/or the State Investigation Commission.

THE COURT: That is fine. And I don't think the Government contends to the contrary.

Therefore, I think it should be brought to the jury's attention. Unless, of course, the defense does not want it brought to the jury's attention, in which event I won't make this a requirement of its introduction.

MR. HOEY: I didn't follow you on that.

THE COURT: Look, Mr. Hoey, what I am saying is this: If you do not wish this brought to the jury's attention I will not insist that it be done. I had understood you a few minutes ago, however, to make the argument that it was never delivered to the addressee.

MR. HOEY: That is correct.

THE COURT: And the Government apparently doesn't disagree with you.

MR. HOEY: I agree.

THE COURT: If you want that brought to the attention of the jury I am all for you.

MR. HOEY: That is what I wanted.

THE COURT: I am all for you. I am trying to support by saying that either the Government has to concede that they have no evidence to the contrary or you both stipulate but I leave that up to you .

MR. HOEY: I would stipulate that it was never delivered by Mr. Rosen or by any other means to Mr. Curran and/or the State's Investigation Commission.

THE COURT: All right. Will you accept that, Mr. Bush?

MR. BUSH: The Government will accept that, your Honor .

THE COURT: All right.

MR. HOEY: Your Honor, as far as redacting is concerned, may I ask the name of the Paul Curran, his title and the address be redacted from this, and just to start out with "Gentlemen"? That is, to avoid the question of prejudice in this case, any possible prejudice in this case.

THE COURT: Of course, if we did that, all this talk about the stipulation would be inconsequential.

MR. BUSH: The think the letter is redacted

as proper as it is. I don't see how the fact that it's addressed to Mr. Curran per se will mean anything to the jury particularly in light of the stipulation.

THE COURT: Well, he is the United States Attorney and they have been told that.

Of course, that can cut both ways.

MR. HOEY: That is true.

THE COURT: That can help the defense actually, if you think about it a little bit.

MR. BUSH: If the defendand desires to eliminate just the name of Mr. Curran but not the State Investigation Commission, it would be acceptable to the Government although it's also acceptable to the Government to leave the letter as it is in redacted form.

THE COURT: Well, what would you think of that idea, Mr. Hoey? Would that help any from your point of view?

MR. HOEY: Well, actually from my point of view it would help if I just left Mr. Curran in and left his title as Chairman of the State Investigation Commission out.

THE COURT: I can understand that but I don't think I will require the Government to excise this address because it really is of considerable importance to the jury to know that the letter is addressed to somebody and that it was a somebody in a public body, which has already come out

more or less by indication from the testimony of Mr. Greenberg.

So I will let that matter stand and 8-A will be received without any fetters on the Government's bringing it to the jury's attention at an appropriate point, which point should not come during cross examination, by the way, Mr. Bush.

You should wait until after this is over and this witness is excused at the very least.

Exception to the defendant.

What is the story about Mrs. Gibbs?

I am handing down 8-A in evidence and 8.

In the meantime, our Juror Number 4 has called our chambers and indicated that she was in some subway accident but that she is on her way. The perils of getting a jury together in New YOrk City are getting increasingly grave.

MR. MUSOFF: If your Honor please, may I take the time, since we have it at this point, to correct a misimpression I may have made both to the Court and Mr. Bush when I alluded to the purpose of Mr. Gelfand's testimony as an expert witness in this case. At that time I stated that he would not testify to happenings or events but that he would be called as a tax expert in the ordinary sense. That statement is true with respect to any events contemporaneous

with the years that is the subject of this indictment. However, during the year 1972 Mr. Gelfand, as a tax expert, dealt with the Canadian Department of National Revenue and at that point he secured a determination of taxes of Intercontinental Hanger which indicated the acceptance of payments made to Mr. Rosen as loans rather than salary and when he is called I would expect that he would testify to that fact.

THE COURT: If that is going to happen , I would appreciate your telling us, Mr. Musoff, but let me also tell you that I will tell the jury flatly that is of no controlling force or weight here whatsoever as a matter of law.

MR. MUSOFF: I understand that, your Honor, that the jury --

THE COURT: You and this expert better understand it because that is the law. I have had this experience and this issue has arisen in a number of cases in this circuit, going back to the cases when I was a prosecutorial type myself. And this is the law and it hasn't changed. But if you, for some reason, think this is relevant, I must tell you that that is what the charge will be. I can't conceive of any basis to decide this case on any kind of determination by some Canadian tax authority. I just don't.

In any event, I appreciate your bringing this to our attention and I see no reason to deviate from my acquiescence with your viewpoint yesterday that this gentleman sit here and listen to whatever he wants to listen to.

MR. MUSOFF: Thank you, your Honor.

MR. BUSH: Unless the Government sounds be construed as acquiessence, the Government doesn't believe that such testimony is relevant and, moreover, it doesn't believe that the factual representations Mr. Musoff has made with respect to it are correct.

THE COURT: Well, I think you could be right but I am not going to rule on that until I hear what I hear. We aren't at that stage yet.

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2pm

MR. BUSH: Your Honor, do you want Mr. Bertoli brought out?

THE COURT: Do I want what?

MR. BUSH: Are we ready to begin?

THE COURT: As far as I am concerned, yes.

(Jury present.)

R I C H A R D B E R T O L I, resumed.

THE CLERK: Mr. Bertoli, you are still under oath.

THE COURT: Ladies and gentlemen, we are finally ready to proceed. Mr. Hoey?

CROSS EXAMINATION CONTINUED

BY MR. HOEY:

Q Mr. Bertoli, in 1965, by whom were you employed?

A Mr. Hanger, Inc., and its subsidiaries.

Q And you were employed there as what?

A I functioned as the controller of the company. In '65 I was spending most of my time on the financial phase.

Q As that you were a salaried employee, is that correct?

A For most of 1965, yes.

Q What salary were you getting at that time?

A I believe it was $200 a week.

Q Any other fringe benefits, Mr. Bertoli?

A In 1965 I don't believe so, but it is possible.

Q Was it in 1965 that you met Hainick and Press?

A Yes, it was.

Q Was it at that time that you were endeavoring to secure financing for Progressive Drug?

A Yes, it was.

Q Had Mr. Hainick and Mr. Press already invested into Progressive Drug, do you know?

A Not from the records. I don't believe they had invested any money at that time.

Q Did there come a time when they did invest money?

A They? No.

Q Did they secure any financing through you?

A No, they did not.

Q At the time you were working with them in an endeavor to secure financing, Mr. Bertoli, were you acting on behalf of Mr. Hanger?

A No, I was not.

Q Were you acting on behalf of yourself?

A Yes, I was.

Q This is what you claim is an extracurricular activity, is that correct?

A Yes, that is correct.

Q And your efforts were unsuccessful.

A My efforts were successful but they were not accepted by all of the people involved.

Q Who other than Hainick and Press were involved in Progressive Drug at this point, 1965?

A Joseph Abrams and Lawrence Rosen.

Q Joseph Abrams, was he an investor at that point?

A Joseph Abrams had provided financing at the request of Lawrence Rosen to Pawnee Drug. Pawnee Drug in turn used that money as the down-payment on a contract to purchase Progressive Drug.

Q Did you have anything to do with the securing of the down-payment sum from Mr. Abrams?

A No, I did not.

Q Did Mr. Abrams have any stock interest in Pawnee Drug at that time?

A At that time I don't recall. I don't recall if there was a division of the shares of Pawnee at that date.

Q By the way, were you acting --

A Could have been.

Q -- as financial advisor or accountant for Mr. Abrams at that point, Mr. Bertoli?

A At that point? No, I was not.

Q Did there come a time when you did act as his accountant and/or financial advisor?

A Yes, there was.

Q Did you act as both?

A It is difficult to -- it depends on your definition of financial advisor. As an accountant I guess you could assume that I was acting as both.

Q Did you give financial advice? That is what I am saying.

A Yes.

Q When was the deal consummated whereby Progressive Drug was taken over by Pawnee?

A It was in the latter part of 1965 that they entered into a contract, but the contract was not closed until sometime in early '66.

Q Who were the principals in Pawnee?

A The principals in Pawnee at the time of the contract?

Q The contract and then at the time of the closing.

A The principals at the time of the contract were Henry Hainick and Lawrence Press. I don't believe additional shares were issued at the time of contract.

Q How long was it between the contract and the closing of title?

A About three months.

Q In the intervening period did there come a time when other people or other groups became part of Pawnee?

A Yes.

Q Who were the other individuals?

A Lawrence Rosen, Joseph Abrams, James Oglesbee, whom I was allocated shares of Pawnee Drug and I gave them to Oglesbee, so he received his shares directly -- or my shares, I should say.

Q Were these shares given to you for services rendered?

A Yes.

Q They were given to you by whom?

A They were allocated from the original incorporation. This was the arrangements that came back at a meeting that was held between Rosen, Abrams, Hainick and Press.

Q You weren't present.

A And the Goldmans.

Q Were you present at that meeting?

A I was present for part of the meeting.

Q And certain shares of Pawnee were allocated to you, is that correct?

A That's correct.

Q Who is Mr. Oglesbee?

A Oglesbee is a close friend of an attorney who has represented me on occasion in Chicago.

Q That attorney's name is what?

A William Arnold.

Q Did Mr. Oglesbee turn the shares of Pawnee over to Mr. Arnold?

A No, he did not.

Q He held them as a nominee for Mr. Arnold?

A I don't believe so.

Q You just gave them to him as a close friend --

A That's right.

Q -- of your attorney, is that correct?

A Exactly.

Q When Pawnee completed the contract and closed the title on taking over Progressive Drug -- is that what you are saying to us?

MR. BUSH: Objection as to the meaning of the question.

MR. HOEY: I will withdraw the question. I will reframe it, then.

Q The closing of title was between whom, Mr. Bertoli?

A The closing of title would be between Pawnee Drug and Progressive Drug, but in effect it was a simultaneous

closing because at the same time Pawnee Drug was exchanging its shares with 20th Century Industries, who in turn was receiving the financing from Commercial Trading Corporation.

Q Let me break it down a little bit so I would understand it.

Was Progressive Drug a company or a corporation, if you know?

A Progressive Drug was a corporation.

Q Progressive Drug was selling its stock to Pawnee, is that correct?

A That's correct.

Q Pawnee in turn was transferring all of its stock to 20th Century Industries; is that what you are saying?

A Right. Exactly.

Q At the same time a financing agreement was entered into with Commercial Trading whereby they were going to finance the wholly owned subsidiary of 20th Century --

A 20th Century.

Q -- which would be Progressive Drug, is that it?

A Correct.

Q Were you present at the closing agreement -- excuse me -- closing of the contract?

A No, I was not.

MR. BUSH: Objection as to which closing, your

Honor. I am not sure whether we have a closing as to 20th Century, Progressive or Pawnee.

THE COURT: Well, which is it, Mr. Hoey?

MR. HOEY: I will reframe the question.

Q Were you present at the transfer of title of the stock of Progressive from the stockholders to Pawnee?

A No, I was not.

Q Were you present at the time that the Pawnee stock was transferred to 20th Century?

A No, I was not.

Q Were you present at the time that any financing agreement was made between Progressive Drug and Commercial Trading Corporation?

A I believe I was.

Q Did you have anything to do with drawing up that agreement of financing between Commercial Trading and Progressive Drug?

A Drawing the agreement? No. That was done by Commercial Trading.

Q Did you have anything to do with the negotiations of the agreement between Commercial Trading and Progressive Drug?

A Only to the extent that they utilized my projections and summaries.

Q In other words you had made projections and summaries prior to the closing of the finance agreement?

A That is correct.

Q And that is also prior to the takeover by Pawnee and 20th Century of Progressive?

A That is correct.

Q Is that correct?

A That is correct.

Q Were you paid for that, by the way, Mr. Bertoli?

A No, other than the fact that I was allocated shares of stock in Pawnee.

Q How many shares of stock were you allocated?

A I don't recall how much it was in Pawnee but it was converted into 10,000 shares of Twentieth CenturY.

Q Was Twentieth Century a publicly held company?

A Yes.

Q That means it is registered with the Securities & Exchange Commission, shares could be sold to the public?

A The company is registered with the Securities & Exchange Commission and subject to periodic reporting.

Q And you got 10,000 shares of their stock?

A That is correct.

Q That is for your projections and summary of work?

A That is correct.

Q And those you turned over to Mr. Oglesbee, is that correct?

A That is correct.

A At that time, Mr. Bertoli, did you owe Mr. Oglesbee any money?

MR. BUSH: Objection as to relevancy. I think we have pursued this line of questioning far enough.

THE COURT: I must say I don't understand what difference it makes to our case if he owed Oglesbee money at all.

MR. HOEY: All right.

THE COURT: As I understand it, you agreed to take shares of Oglesbee, isn't that what you told us?

THE WITNESS: No, your Honor. I was allocated shares, in effect, in Twentieth Century Industries. I had owed favors to William Arnold. He, in turn, owed favors to Oglesbee and, as a result, I had said to Arnold, "It's investment stock in a company which stock is trading at a low price, why don't you take those shares?"

He said, "Fine, but, in turn, I don't need them, give them to Oglesbee."

THE COURT: This accomodated you and it accomcdated Arnold?

THE WITNESS: Exactly.

MR. HOEY: That is what I was trying to get at.

Q You mentioned an investment stock. What do you mean by that?

MR. BUSH: Objection again as to relevancy.

THE COURT: We have gone this far. It seems to me the meaning is quite plain. If counsel wants to ask it we

will allow this one question on this subject.

A This is restricted stock which cannot be immediately sold to the general public without registration or a legal opinion.

Q Thereafter, Mr. Bertoli, when did this occur, this closing, to the best of your recollection?

MR. BUSH: Which closing are we addressing now?

MR. HOEY: The closing involving Progressive Drug, Pawnee, Twentieth Century and the financing agreement with Commercial Trading Corporation.

MR. BUSH: If I am not mistaken, your Honor, there are three separate closings. Perhaps we can narrow it down.

MR. HOEY: I thought the witness said they all appeared simultaneously. I am trying to find out when it happened .

A Well, I think the contracts would speak for themselves but there were a series of contracts that were drawn. Paperwork was drawn between Progressive Drug and Pawnee Drug. There was only a down payment given at that point. The actual closing in reality, I believe, took place all at one time and that would be in early 1966.

Q That is all I am asking you.

A When Commercial Trading turned the money over.

Q During 1966 did you do any work for Progressive Drug?

A Yes, I did.

Q When?

A Sometime in September of 1966 or October of 1966.

Q In the intervening period between the early part of 1966 and the September or October date of 1966 did you do any work of an accounting nature or financial nature regarding Progressive Drug?

A I believe only one on one occasion.

Q Were you paid for that?

A No, I was not.

Q In September or October of 1966 what was the circumstances under which you did work for Progressive Drug?

A I don't understand the question.

Q How did it happen that you went to do work for Progressive Drug? Who asked you to work for them?

A I was asked to work for them by Sam and Martin Goldeman.

Q They were the principals in Twentieth Century, is that correct?

A That is correct.

Q What did you do for them at that time?

A I went in as a favor and took a look at the records to take a look at the cash problems that had been noted by the accountants.

Q Had the accountants already been in there?

A They had been in there for about a week.

Q This is either September or October of 1966?

A That is correct.

Q The books were all made available to you?

A Yes.

Q Did you see Mr. Hainick there?

A Yes, I did.

Q Did you speak to Mr. Hainick?

A Yes.

Q What was his function at Progressive Drug?

A He handled their legal problems. He supervised the administrative area of the company.

Q Would it be safe to say that he handled the administrative end of the business?

A Yes, that is correct.

Q That would be including the keeping of records and finances and other things?

A Correct.

Q And did you see Mr. Press there?

A Yes, I did.

Q Did you see Mr. Goldfinger there?

A Yes, I did.

Q What was his position there?

A Mr. Goldfinger was the controller of Progressive Drug.

Q The controller is the person who actually keeps the records, makes the entries or docket entries or they are made under his direct supervision, is that correct?

A Yes, basically.

Q How long did you spend making a study of the cash flow, I presume, of Progressive Drug?

A It wasn't cash flow.

Q What was it?

A It was cash disbursements, actual cash.

Q Excuse me, I used the wrong term.

A I spent about three, four hours.

Q And the books were all made available to you?

A Well, they were made available but I didn't utilize them because I was just going over the summaries from Milton Gottesman. Milton Gottesman had provided me with them.

Milton Gottesman was the accountant for Futerman &

Berylson who had just taken over the audit work at Progressive Drug. He had uncovered the fact that there was a substantial amount of missing cash.

Q What was the amount?

A At that point I believe it was something like 20 or $30,000, somewhere in that neighborhood.

Q Were your brought in to find out where the cash had gone?

A No, because he was able to immediately note where it went.

Q And your purpose was what in being brought in?

A Just to go over what the problems were with them.

Q And did you determine the problems?

A I determined some of the problems, yes.

Q Did you determine that there was travel and expense problems in the company?

A Yes, I did.

Q How about the marketing problems?

A Well, I don't know what you mean by marketing problems.

Q Sales problems.

A The company -- that didn't take place at that conversation but at a subsequent date I had sat in on some executive committee meetings and there was disagreement as to

what direction the company should take marketing-wise. There was disagreement on sales. It was a disagreement on virtually every management point.

Q By the way, do you know who the Board of Directors were at the time?

A The official board of directors?

Q There can only be one official board of directors, can't there not, in a corporation, Mr. Bertoli?

A One official board of directors, yes.

Q Who were the official board of directors, as you recall them?

A The official board of directors, I believe, were Sam Goldman, Martin Goldman -- and I can't think of who the other official directors were.

Q Were there minutes kept of Progressive Drug?

A Not that I know of.

Q Did you attend any meetings of the board of directors?

A I never attended any meetings of the board of directors, the official board of directors.

Q After you had made this three or four-hour analysis, did you speak to Mr. Rosen?

A The following day, the following morning.

Q And can you be more explicit in regard to dates, Mr.

Bertoli - cross

Bertoli?

A I am afraid I cannot.

Q It was either sometime in September or October or 1966, is that correct?

A That is correct.

Q What is the official fiscal year or what was the fiscal year of Progressive Drug?

A Progressive Drug was on a calendar year end accounting-wise. I believe one of the other companies was on a September 30, and I forget which one.

Q And the accountant who was in there, Mr. Gottesman, what was he doing in there? Was he making an audit of the books for the year?

A No, he was doing a preliminary audit. When you do an audit usually you will go in before the year end in order to do most of your work and prepare for the year end and after the year end come back.

Q That is customary, to come in and in three months or four months before the end of your fiscal year to make a preliminary audit?

A That is correct.

Q And that was done in this case?

A It is customary in the industry, yes.

Q The industry you are talking about --

A The accounting profession.

Q The accounting industry?

A Yes.

Q Before you spoke to Mr. Rosen had you spoken to the controller, Mr. Goldfinger?

A Before I came -- I don't understand the question. You mean that day?

Q You were up there for about four hours. Did you talk to Mr. Goldfinger?

A Yes, I did.

Q Did he show you anything?

A Yes, he did.

Q What did he show you?

A He showed me a black book which contained notations as to where various cash items were going.

Q And you examined that, sir?

A I looked at it, yes, I did.

Q Do you remember when that first started, that black book, when the first entries were made?

A I believe it was around the date of the closing. I think it was early in 1966.

Q Could you tell us what month it would be, Mr. Bertoli?

A I would have to think February or March.

Q Of 1966?

A Yes.

Q What sort of book was this, Mr. Bertoli?

A It was a little black binder. I can't think -- all I remember was a black cover and I have no recollection of it

Q Was it a bound book or was it a looseleaf book?

A I believe it was a bound book.

Q Can you tell us the size of it?

A I am looking to see if there is something I can point to that would describe it. It would be a little smaller than the testimony that is sitting in front of Mr. Rosen.

Q What is that, 8 by 11?

A Yes.

Q For how long a period of time or up to what period of time were those notations made in that book that you examined?

A Up until the date that we were there.

Q Were you able to check out the amount that had been paid out or that was listed in that book and come to that point?

A What do you mean by check out?

Q Did you add up the amounts that had been paid out

by cash?

A I did not. They were tabulated by Gottesman on a work paper.

Q Was that on a separate paper?

A Yes.

Q Did he give you that paper?

A I looked at that, yes.

Q Did you make any notations from that paper?

A I could have. I don't recall.

Q You don't recall?

A No.

Q Do you have them?

A Do I have what?

Q Would you have those notations if you made them, Mr. Bertoli?

A No, I would not.

Q Were the amounts that were listed therein of an equal amount?

A As far as that sheet was concerned, no, there were varying amounts.

Q And what was the largest amount that you saw that was recorded in that black book?

A I don't recall. I believe there was one around --

I remember one around $900 or something like that.

Q And what was the lowest amount?

A I don't recall.

Q And did Mr. Gottesman at that time tell you the number of people who were receiving funds that were being recorded in that black book?

MR. BUSH: Objection as to hearsay, your Honor.

THE COURT: I am not quite sure what the thrust of your question is. I am sorry, Mr. Hoey. What do you mean by that?

MR. HOEY: Mr. Bertoli in his direct examination --

THE COURT: That is not the problem. On its face I don't understand the question.

MR. HOEY: I will withdraw it and reframe it.

THE COURT: Reframe it.

Q Did Mr. Gottesman tell you, Mr. Bertoli, to whom references were made in regard to the figures and in numbers and dates made in that black book?

A Yes, he did.

Q To whom did he refer? Whom did he tell you the references were made to?

MR. BUSH: Same objection.

THE COURT: That broad a question, Mr. Hoey, I

suggest to you is not only irrelevant but, worse than that, it may bring out things that neither you nor the Government need to get into nor, indeed, would want to get into.

I don't quite follow from your point of view what this is designed to get at. If you want to ask him about any references to your client or something of that nature, why, that might be something else, but I think you ought to make it clear that that is what you are after.

MR. HOEY: I know what I am after.

THE COURT: Then why don't you specify it?

I think it's unnecessary, from your point even, to get into a whole lot of names and amounts which have nothing to do with our case at all, either from the Prosecutor's viewpoint or the defense's viewpoint.

Q Mr. Bertoli, from the book that was shown to you by Mr. Goldfinger, were you able to determine to whom reference was made on the numbers and the dates?

MR. BUSH: Same objection. I am not sure I understand the form of the question, your Honor.

THE COURT: I have the same problem as I expressed a moment ago, Mr. Hoey. This could involve people and numbers that have nothing to do with our situation and, worst than that, might be counter-productive.

Q Mr. Bertoli, was Lawrence Rosen's name mentioned in this book?

A I believe his initials were.

Q Do you have the book?

A No, I don't. If you will show it to me, I will probably be able to show you.

MR. HOEY: I would like to see the book at this point.

MR. BUSH: The Government has a copy of the book which had been marked for identification. I have no objection to turning it over to defense counsel at this time.

Let the record reflect that I am turning over a document to defense counsel, which has been marked for Identification as Government Exhibit 15 and I suppose the witness requested the opportunity to view this.

MR. HOEY: I call upon the Government to produce the original from which this has been made.

MR. BUSH: There have been extensive efforts to obtain the original , your Honor, and we have been unsuccessful in obtaining it.

THE COURT: All right. Go ahead.

Q I show you Government's Exhibit 15 for identification and ask you if there is any place in those papers which have been submitted by the government for identification that indicates the name of Lawrence Rosen either by name or by initial.

A Well, here is one item on 11/28. You see, you got to go with the codes that were being used. For example, it mentions "Abe." That refers to Abe Katz. You see that $200 item?

Q I asked you in regard to LarryRosen or L.R.

MR. BUSH: Objection, your Honor. Defense counsel is being argumentative. The witness' answer was totally responsive.

THE COURT: I can't be sure of either one, because the witness was cut off.

Go ahead, Mr. Bertoli. What were you about to say?

THE WITNESS: Well, you see, your Honor, there is a runner that was mentioned earlier by the name of Abe Katz, who was carrying cash back from Progressive Drug to Rosen. It is his name that is mentioned in here, "Abe", and next to it will be marked a "2", referring to $200 in cash.

There is another item over here which mentions "Abe, 200"; which is the same thing.

These were summarized, by the way, based upon the information that was provided to Milton Gottesman by Henry Hainick and then verified with Rosen, Hainick, Press, Abrams, and everyone else, at a later date.

Q Is there any indication, as you said earlier, that Lawrence Rosen or L.R. -- just limiting yourself to that -- is in that paper which is marked as Government's Exhibit 15 for identification?

MR. BUSH: Objection; asked and answered and also argumentative.

THE COURT: I am not sure I agree. In other words, I will allow this.

The question really is this, aside from what you have already stated, Mr. Bertoli: Are there any initials L.R. or P.L.R.; or is there the name Rosen or Rosenrauch or something of that nature?

THE WITNESS: No, there is not in this particular part of the book, your Honor.

THE COURT: All right.

Q On these two entries that you mention, one date is 10/18. Does that mean October 18?

A Yes, it does.

Q That would be 1966, is that correct?

A That's correct.

Q And the other one is November 28?

A That's correct.

Q Thatwould be 1966, is that correct?

A That's correct.

Q Did you see on either of those two dates Mr. Abe or Abe Katz deliver that money to Mr. Rosen?

A I could have.

Q Could have.

A I had seen him on a couple of occasions, but I couldn't definitely tell you that on those two dates Abe Katz delivered the cash.

Q I think you told us yesterday that on two occasions you were aware that Abe Katz brought money to Mr. Rosen?

A Yes.

Q And you said that those two occasions were either inthe late spring or early summer of 1966. Isn't that correct?

A That's correct.

Q I am quoting on page 94 of your testimony of yesterday, line 13.

A Yes, that's correct.

Q Isn't that correct?

A That's correct.

Q Those are the only two occasions, is that right?

A That's why I couldn't tell you whether I had seen that or not.

Q After you became aware of the fact that there was money being given to Mr. Rosen, did you determine where the money went?

A Did I determine where the money went?

Q Yes.

MR. BUSH: Objection as to the form of the question.

THE COURT: Did you determine where the money -- I must say, again, Mr. Hoey -- did you determine where what money went?

MR. HOEY: This so-called $200 that he said that the records indicate was given to Mr. Rosen.

A It went to Mr. Rosen.

Q Anybody else get a part of that money, sir?

A Yes.

Q Who else?

A Eve Abrams got half of that $200.

Q She got a hundred dollars, is that correct?

A That's correct.

Q By the way, did Eve Abrams perform any services for Progressive Drug?

A None whatsoever.

Q Did Mr. Rosen perform any services for Progressive

Drug?

A Yes, he did.

Q Do you know whether Mr. Rosen expended any monies on behalf of Progressive Drug?

A I would be unable to answer that question. I would not have any direct knowledge of that.

Q You have no knowledge as to whether or not he did or did not, is that correct?

A That's correct.

Q But you do know that Eve Abrams did not.

A That --

MR. BUSH: Objection.

Q To perform any services?

A To perform any services? That I can tell you she did not.

Q By the way, Mr. Bertoli, did you prepare the income tax return for Mrs. Abrams for the year 1966?

A The final tax return, no, I did not.

Q Did you prepare a tax return that was filed with the Internal Revenue Service for 1966 for Joseph and Eve Abrams?

A I prepared a tentative tax return that omitted a number of items, including income.

Q Did you on that tax return, tentative tax return,

declare any monies received by Mrs. Abrams during the year 1966 from Progressive Drug?

A No, I did not.

Q You signed that tax return, did you not?

A Yes. As a tentative tax return. There would be no tax consequence if the Progressive money was reported and there was a dispute between Abrams and Rosen as to actually how much it was.

Q At that time --

A Since there was no tax consequence, it was not reported.

Q You did not indicate that she had received any monies at that time?

A That's correct. If it was reported there would be no tax because there was a substantial legal fee.

Q So for that reason you did not report it?

A And marked the return "tentative." When they settled the dispute as to how much the amount actually was, it would have been reported and I assume Mr. Gelfand reported it that way.

Q But at the time that you prepared the return you were aware of the fact that Mrs. Abrams had received at least $4600 from Progressive Drug, were you not, sir?

A Yes, that's correct.

Q By the way, you also prepared Mr. Rosen's tax return for 1966, did you not?

A I prepared the information for his tax return for 1966.

Q You first of all prepared the W2 form, which is the salary form, is that correct?

A I directed the preparation of it for the company, that is correct.

Q That was done under your supervision, is that correct?

A Yes, it was.

Q You also prepared a form 1099, is that correct?

A That is correct.

Q Did you prepare the figures that went into the tax return for Mr. Rosen that was filed for the year 1966?

A Yes, I did.

Q Did you have that typed under your supervision?

A Yes, it was.

Q That was typed by one of the girls in the office of Mr. Manger in Long Island City, is that correct, Mr. Bertoli?

A Yes. It was typed by Ann Steinhardt.

Q Did you, sir, fill out in pencil or in handwriting the figures that were placed in that tax return which was

filed for 1966?

A Yes, I did.

Q At that time, sir, were you aware of the fact that Mr. Rosen had received sums of money from Progressive Drug?

A Yes, I was.

Q You did not place thatin the tax return, is that correct?

A On his instructions, that is correct, and that is the reason why I didn't sign it.

Q You are a Certified Public Accountant?

A Yes, I am.

Q You have certain responsibilities, sir?

A Yes, I do.

Q As part of your responsibilities, if you do not agree with what is being done you walk away from the deal, isn't that correct?

A That is exactly correct.

Q Did you walk away from this or did you cause this tax return to be typed and to then have it signed and to be filed?

A I was following the instructions then as an employee, not as Certified Public Accountant, at the time that I was directed to give it in for typing.

Q You were still employed by Mr. Manger, is that correct?

A Was who employed?

Q You were still employed by Mr. Manger?

A Yes, I was.

Q And you remained in their employ, did you not?

A Yes, I did.

Q Until when, Mr. Bertoli?

A Until I resigned April 15 of 1968 and terminated my employment on June 1st of '68.

Q That is approximately a year and a couple of months after this?

A That is correct.

Q Mr. Bertoli, there came a time when I believe you told us something about Intercontinental Manger yesterday, is that correct?

A We talked about Intercontinental Manger yesterday, yes.

Q Whatwas thebusiness of Intercontinental Manger?

A Intercontinental Mangers was set up basically as an intermediary sales organization into the Canadian market for disposable plastic hangers.

Q And this was a Canadian corporation set up according to the laws of Canada, is that correct?

A That is correct.

Q Did you have anything to do with the formation of that corporation?

A I met with the accountants.

Q Who were the accountants, sir?

A Harry I. Craimer, and I don't recall the full name of the firm. It was Craimer something.

Q That is in Montreal?

A In Montreal.

Q Was there a fiscal year set up for that company, sir?

A I believe it was set up as the same fiscal year as the Mr. Manger year, which was January 31.

Q January 31.

A No, I'm sorry, I might be wrong. It could have been a March 31 fiscal. I am not sure.

Q It wasn't a calendar year fiscal?

A It was not a calendar year.

Q Would you take my word that it is a January 31 fiscal year?

A Sure.

Q Mr. Bertoli, when was Intercontinental Manger set up? When was it formed? Excuse me.

A It would have been formed sometime in 1965. I

can't give you the month.

Q Did it start to do business at that time?

A Yes.

Q Were accounting reports submitted by the Canadian accountants?

A No, there was not.

Q By the way, where were the records kept of Intercontinental?

A They were kept in Long Island City.

Q And who kept them, sir?

A I did.

Q You mean they were kept under your supervision?

A Yes. In that particular case I kept them for the year 1965 and '66 myself.

Q And how about 1967?

A 1967 they were not prepared at all. In fact, they weren't prepared at the time I left.

Q What do you mean by that? I don't know what you mean by that, Mr. Bertoli.

A Well, since the transactions were so small, they would only be prepared once a year, and that would be at the time of audit. For example, the 19 -- the fiscal year ending January 31, 1967, which would cover 1966's payments were not actually prepared until probably around October

or September of 1967. The figures for the fiscal year ending January 31, 1968, I don't believe would have been prepared probably until about the same time in 1968, which was after I left.

Q That would be towards the end of the year they would be prepared, is that correct?

A Yes.

Q And whatever tax returns that had to be filed with the Canadian Government would be prepared by you or by the Canadian accountants?

A I don't recall. I believe I might have prepared some of them.

Q You said yesterday there came a time when you and Mr. Rosen had a discussion concerning some additional funds that were to be paid to Mr. Rosen and then to you.

A Yes.

Q Is that correct?

A Thatis correct.

Q Can you remember when that occurred, Mr. Bertoli?

A It would have been sometime in early 1967. I don't recall. If you could show me the checks, it would refresh my recollection. I think they are here someplace.

Q I show you Government's Exhibit 12 and 12A. Do they help refresh your recollection?

A If these were the first checks issued to Rosen, it does. Yes, in fact, I can see where the series starts, 2001. It would have been right on that date it would have been March 3, 1967 that the conversation took place.

Q That took place where, sir?

A In the offices of Mr. Manger in Long Island City.

Q Who was present at that time?

A Lawrence Rosen and myself.

Q You had a conversation concerning the fact that he needed additional monies, is that correct?

A That is correct.

Q It was agreed that you would also get additional monies, is that correct?

A That is also correct.

Q And you were to get what, $150 a week?

A That's correct.

Q And Mr. Rosen to get $250, is that correct?

A That is correct.

Q Did you thereafter start issuing checks, one to you and one to Mr. Rosen, in the sum of $150 or $250 a week?

A That is correct.

Q Did that continue on through the end of 1967?

A Yes.

Q Were they issued weekly?

A They were issued weekly.

Q Were they given for any services that were rendered by either you or Mr. Rosen?

A Yes, certainly.

Q To Intercontinental Manger?

A To Intercontinental and its parents.

Q These were issued by a subsidiary?

A Yes.

Q What services did you render to Intercontinental Mangers, Mr. Bertoli?

A I assisted with Rosen in the negotiations of the formation of Mr. Manger-Quebec, which as I understand is a very profitable concern today, and I generally set up the format which was saving the company something in the neighborhood of, I believe, at least $20,000 to $30,000 a year in custom duties on imports into Canada or exports to Canada from here; and what little recordkeeping there was.

Q The recordkeeping system was minimum, was it not sir?

A Yes, minimum.

Q What connection did Intercontinental Mangers have with Mr. Manger -- was it Quebec?

A Yes.

Q What relationship did they have to that?

A Mr. Hanger-Quebec was owned one-third by Intercontinental Hangers, Ltd. one-third by a distributor in Canada, I believe it was Peerless Paper, and one-third by Plaines Plastics, which was a manufacturer in Canada.

Q When was Mr. Hanger-Quebec formed?

A Sometime in 1967.

Q Can you get any more specific than that, Mr. Bertoli?

A No. If you have some -- I believe you have the information, you are the attorney for them.

Q Would it be subsequent to the time these checks were started to be issued?

A I am not sure. It could have been almost simultaneous.

Q Mr. Bertoli, these were the services rendered by you as an employee here in the United States, is that correct?

A That is correct.

Q You did not go to Canada to perform these services?

A Well, that is not exactly correct. I went to Canada on a number of occasions.

Q But your base of operations was here?

A Basically all of the work was done here.

Q In the United States.

A Yes.

Q YOuconsidered this as income to be declared on your income tax, sir?

A Surely.

Q You also believed that this was part of your duties as an employee of Mr. Hanger, Inc., is that correct?

A Yes.

Q And you were the recordkeeper of Mr. Hanger, Inc., were you not, sir?

A I was responsible for the financial records of the company, except for the last year.

Q Did you make arrangements to have withholdings made in regard to your checks that were being paid to you from Intercontinental Hanger?

A No, I did not.

Q Are you required as an employee to have the monies withheld by your employer for sums received as an employee?

A If it is received -- as salaries, yes. If it was a straight salary, it should have withholdings. That is one of the reasons why I was paid out of the Canadian concern, so there wouldn't be any withholding.

Q You considered this a salary to you, did you not, Mr. Bertoli?

A I considered it as compensation, which I of course reported.

Q Not as salary.

A Right. Not as salary, but as a fee for services.

Q At the time as of March 3, 1967, when you started drawing the checks, Mr. Bertoli, was there anybody else receiving any compensation either for expenses or for salary from Intercontinental Manager?

A In 1967, besides myself and Rosen, when this began, there was money being paid to Carl Birnbach.

Q When did that start, Mr. Bertoli?

A In 1966.

Q Were you issuing the checks to Mr. Birnbach during the year 1966?

A Yes, I was.

MR. BUSH: Objection as to the relevancy of payments to Mr. Birnbach.

THE COURT: I must say this defeats me too, Mr. Posner. I don't see what this has to do with the case generally or the defense thereto.

MR. POSNER: May I state that it does, your Honor,

and then I will as part of my defense I will show what the story is.

THE COURT: I can only say that be as quick as possible, because it seems to me that we are going into all kinds of widely removed subjects which don't help much from anybody's point of view, least of all the defendant.

I will take it subject and see what happens. I can only go on faith at this point, I guess.

Q Did there come a time, Mr. Bertoli, when you worked in an effort to have old Mr. Manger either merged or acquired by somebody else?

A In 1966 there were some conversations with other companies, yes.

Q How about 1967?

A 1967 also.

Q Did there come a time in 1967 in which you spent months of your working time in an effort to have Mr. Manger acquired by some other company?

A No.

Q Were you still active in the day-by-day operation of Mr. Manger during that time --

A No.

Q -- during 1967?

A During 1967, no, I was not.

Q What were you doing during 1967?

A I was primarily engaged in seeking a method of acquiring another company, Yankee Plastics.

Q Did that occupy most of your time during 1967 and up to the time of the acquisition of Mr. Hanger by Yankee Plastics on March 15 of 1968?

A Yes, it did.

Q Was that a period of about a year?

A Yes.

Q You were still being paid by Mr. Hanger at that time, sir?

A Being paid by Intercontinental Hangers.

Q No, I mean you were being paid your regular salary by Mr. Hanger in addition to --

A I was being paid by Mr. Hanger as well as by Intercontinental Hangers, yes.

Q You were getting what, $200 a week from Mr. Hanger and $150 from Intercontinental?

A I am not sure but it is probably about that.

Q Are you married, Mr. Bertoli?

A Yes, I am.

Q Were you married prior to the acquisition of Mr. Hanger by Yankee Plastics on March 15, 1968?

MR. BUSH: Objection as to relevancy again, your

Honor.

THE COURT: Yes. I quite agree. Let us get on to something else.

MR. HOEY: Your Honor, may I make an offer of proof on this?

THE COURT: I can't conceive, with or without an offer of proof, the relevance of this simple fact. I'm sorry, but we don't need to waste any time on that.

MR. HOEY: Your Honor, may we have a five minute recess, so I can realign my thinking on this?

THE COURT: If that is what you would like, we will take a short recess of about five minutes, ladies and gentlemen.

Mrs. Gibbs, could you step up a minute, please.

(Recess.)

[In open court - jury present.]

THE COURT: Any more cross-examination, Mr. Hoey?

MR. HOEY: Yes, but I will be very brief, your Honor.

Q Mr. Bertoli, by the end of 1966 didn't the Progressive records indicate that payments were made to Rosen in cash or check?

A Yes. At the end of 1966.

Q So, anybody examining the records of Progressive would be able to see such payments were made?

A Right, after September of 1966 all the correct information was recorded, right.

Q I show you Government's Exhibit 10 which is an agreement between Yankee Plastics and Mr. Hanger dated March 15th, 1968 and a bill of sale dated the same date, is that correct?

A That is correct.

Q Did you prepare those, sir?

A No, I did not.

Q Did you have anything to do with the preparation ?

A With the preparation -- no, I assisted in the negotiations of it.

Q Did you have anything to do with getting the figures

together?

A The figures together? Basically there are no figures here together.

Q Do you have the listing of assets of Hanger and --

A Just molds.

Q And patents, is that correct?

A Yes, and patents. This was received from the patent attorney by way of a letter and this was prepared by Rosen and the prices were put in based upon negotiations between Pandolfo, who was the president of Yankee Plastics and Goldman.

Q That was the company who acquired Hanger, is that correct?

A That is correct.

Q And at the time of that merger, did you acquire any stocks, sir, or that acquisition?

MR. BUSH: Objection as to relevancy again, your Honor.

THE WITNESS: I don't really understand the question.

THE COURT: Just a moment.

Now, I think I will allow a simple question and answer as to whether or not he acquired any stock in Yankee

Plastics.

A Did I acquire stock -- I received the stock from Ben Zuckerman directly myself. I received about twenty thousand some odd shares of stock.

Q Was that listed in you name, sir?

A Yes, it was.

Q Were there any listed in any nominee of yours?

A No.

Q Any listed in the name of Catherine Candesto?

A That was acquired as a result of this merger -- that is why I didn't understand the question.

My wife was a shareholder of the old Mr. Hanger. As a result of the sale of assets to Yankee Plastics she received stock in Mr. Hanger.

Q Did you sell your stock in Mr. Hanger or Yankee Plastics?

A Mine or my wife's?

Q Let's say your wife's first, as long as you brought it up.

A My wife sold her stock.

Q When?

A At the time of the merger.

Q Do you know how much money she received for her stock?

A Over $90,000.

Q And you sold yours eventually, too, is that correct?

A I didn't sell mine. I received money in the way of a settlement. You handled the case.

Q By the way, do you like Rosen?

A No.

Q Do you dislike him?

A I don't dislike him intensely. He is just a dishonest person and I don't like him.

Q You don't like him at all?

A No.

MR. HOEY: No further questions.

THE COURT: Any redirect, Mr. Bush?

MR. BUSH: Yes, your Honor, I do have some.

REDIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Bertoli, during 1967 and up to the point when you left Mr. Hanger in 1968 who were the officers of Intercontinental Hangers?

A Lawrence Rosen was the president, Ben Zuckerman was a vice president, Eve Abrams was secretary, and I was assistant secretary.

Q Who among these officers made the final decision

or decisions in regard to accounting matters affecting that company?

A Lawrence Rosen.

Q During the same period of time, who were the officers of Mr. Hanger itself?

A Lawrence Rosen was the president. Ben Zuckerman was vice president. Sam Goldeman was secretary. Martin Goldman was a vice president.

Q Who among these officers made the final decision in regard to accounting matters?

A Lawrence Rosen.

Q Did there come a time when you received a request from Mr. Hanger to confirm the payments that you had received from the subsidiary. Intercontinental, as loans?

A Yes, there was.

Q From whom did this request come?

A It came from a Mr. Nankof who was controller of Mr. Hanger at that time.

Q I show you a two-page document that has been marked for Identification as Government's Exhibit 29 and ask you if you can identify the items so marked?

A Yes, I can.

Q What are they?

Bertoli - redirect

A This is a request on a memorandum of Mr. Hanger from David N. Nankof to myself and attached to it is a letter which he requested that I sign and send to the Canadian accountants.

Q I note that these are actually copies. Are these copies of the original two documents, if you recall?

A Yes, they are.

Q What, if anything, did you do once you had received this particular document or documents?

A I immediately contacted the Canadian accountants

Q What did you tell them?

A I asked them what were they trying to do. The monies that were paid to me as well as to everybody else was compensation and an expense item. It had nothing to do whatsoever with loans.

He acknowledged that fact and said, "Well, the company had requested him to change the payments into the form of loans." So, as far as I'm concerned, I reported them on my tax returns. It's income to me and in no way am I going to get involved with any machinations and that was it.

MR. BUSH: At this time I offer into evidence the documents marked as Government's Exhibit 29 for Identification.

MR. HOEY: No objection.

[Government Exhibit 29 was received in Evidence.]

THE COURT: May I see that, please, Mr. Bush.

MR. BUSH: Yes, sir.

THE COURT: Thank you,

Q Was there a time when you had a discussion with the defendant concerning his personal acts and the consequences as a result of receiving these payments from Intercontinental?

A Yes, there was.

MR. HOEY: I object to this as improper redirect, your Honor.

THE COURT: I am sorry, Mr. Bush, but I don't understand that question.

Would you read it back, Mr. Quinones.

[Question read.]

MR. BUSH: It's "tax consequence", not "acts".

THE COURT: I got it the way he did. Why don't you rephrase it.

MR. BUSH: I failed to convey that it's "tax consequences" and not "acts".

THE COURT: I know, Mr. Bush. We don't want to criticize you. Just put it again so we can all follow you.

Q Was there an occasion when you had a conversation

with the defendant as relates to these payments from Intercontinental and, further, as relates to whatever tax consequences would result to the defendant from him receiving payments?

A Yes, there was.

MR. HOEY: Objection.

THE COURT: Overruled.

Q When was this discussion, roughly?

A Sometime in the spring of 1968.

Q Where was it?

A In the offices of Mr. Hanger in Long Island City.

Q Who, if anybody else, was present ?

A Lawrence Rosen and myself.

Q What was said in the course of that discussion concerning that?

A I told Rosen that I thought he was being very foolish and greedy in the way he was acting with relationship to the merger with Yankee Plastics and with what was going on with the way he was taking money out of the various corporations.

I told him that in the past he has had tax problems by not filing tax returns and not reporting income.

MR. HOEY: I object to this, your Honor.

THE COURT: I am going to allow you to finish this conversation you say you had with Mr. Rosen and then I will rule on this.

Go ahead.

Q What, if anything, was said specifically about the payments from Intercontinental?

A As far as Intercontinental was concerned, I told him I am reporting my payments as income. I strongly suggested that he reports his. He said, "I didn't report it last year and I am not going to report it this year and you do what you want. As far as I'm concerned, the payments will probably disappear. Intercontinental Hanger, after the merger, I will just let fade out of the picture and nobody will be the wiser."

THE COURT: All right.

Now, the ruling is that I am going to ask you ladies and gentlemen of the jury to disregard this portion of the answer having to do with something to the effect that Bertoli told him that he hadn't filed tax returns, or something to that effect, in previous years. That is not our concern at all.

Mr. Rosen is not accused of failure to file returns in any year, let alone in past years. So, that has

no bearing whatsoever on our proceedings in this case or the jury's decision in this case.

Otherwise, I will allow it to stand for whatever it's worth.

Any other redirect?

MR. BUSH: Just a few more questions, your Honor.

Q To your knowledge, did the defendant own stock in Twentieth Century Industries?

A Yes, he did.

Q How did he come to own such stock?

A He received it as his share of the transaction involving the acquisition of Progressive Drug by Pawnee Drug and, in turn, Twentieth Century Industries.

Q In whose name was the stock held?

A Ben Zuckerman.

Q What, if anything, did he do with those shares of stock?

A He eventually sold them to an individual who was closely associated with a company that eventually purchased Progressive Drug Company from Twentieth Century Industries.

Q What was the name of that company, if you recall?

A Cordwell International.

Q Approximately when did this sale take place?

A Sometime in 1967.

Q What, if anything, did the defendant do with the proceeds from the sale of that particular block of stock?

A He had Ben Zuckerman endorse the check and it was deposited to the account of Utility Molding Corporation, a wholly-owned subsidiary of Mr. Hanger, in a new bank account.

Q Do you know roughly how much money was involved in that?

A I believe it was $36,000.

MR. BUSH: No further questions.

RECROSS EXAMINATION BY

MR. HOEY:

Q As a matter of fact, you made the entry of the deposit of that $36,000 in there?

A I made the deposits.

Q And Utility Molding was a completely owned subsidiary --

A Of Mr. Hanger.

Q So, in effect, it went for the benefit of Mr. Hanger, is that not correct?

A No, that is incorrect.

Q Where did it go for the benefit of?

A Rosen took over $6,000 out and that was used to purchased stock for himself. He eventually sold that stock

and the proceeds went to himself. That stock was purchased through Weinberg, Rosetan, Hagan, if you want to check the records.

Then he personally loaned Martin Goldman, I believe, $4,000. He paid for some moving expenses of his from New York to Connecticut for about 1,800.

If you show me all the checks, I will give you the rest of the listings of personal expenses.

Q And they all went for Mr. Rosen from Utility Molding, out of the Utility Molding account?

A Not all out of Utility Molding. In addition, he drew other monies from Mr. Hanger.

Q More than 36,000?

A Not more than eighteen. The reason why it was put into Utiliting Molding Corporation was that half of that money was supposed to go to Joe Abrams. And he felt Joe Abrams wouldn't complain if the money was deposited into Utility Molding.

Q In what year did that occur?

A 1967.

THE COURT: Anything else?

MR. HOEY: Yes, your Honor.

Q Mr. Bertoli, you say you declared the monies you received from Intercontinental Hanger as salary, is that

correct?

A Yes, sir, that is correct.

Q As income?

A As a fee, yes, and I reported them on schedule C.

Q And you paid a United States tax on that, is that correct?

A Yes, as well as New York State.

Q At what rate were you paying your tax?

MR. BUSH: Objection as to relevancy.

THE COURT: I don't think the rate is relevant, Mr. Hoey.

Q How much did you receive from Intercontinental Hanger for the two-year period?

A If you will show me a copy of the tax return, I can read it right from the tax return. It's the regular rate as computed --

Q How much did you receive from Intercontinental Hanger?

A Over a two-year period, about 13,000.

Q What would you pay on tax on the 13,000 over a two-year period?

MR. BUSH: Objection again as to relevancy.

THE COURT: Yes, as to the precise amount, I think I agree.

Q Would it be in the neighborhood of one-third?

MR. BUSH: Same objection.

THE COURT: No, this isn't an exercise in tax rates and schedules. You are permitted to ask, she claims that he got from Intercontinental but as to the tax rates, I see no point.

Q Mr. Bertoli, you did not repay any of the monies that you received to Intercontinental?

A Of course not.

Q Do you know whether Mr. Rosen has repaid the monies that he received from Intercontinental?

A As of this date, no. As of the time that I left, I know he did not.

MR. HOEY: No further questions.

THE COURT: Thank you, Mr. Bertoli. You may be excused, sir.

[Witness excused.]

THE COURT: Mr. Bush.

MR. BUSH: Do you want me to call my next witness?

THE COURT: Yes, sir.

MR. BUSH: Let me just have a moment to consult with my colleague here.

The Government will call a Mr. Little.

ROBERT ALAN LITTLE, has having been sworn by the Clerk .

DIRECT EXAMINATION BY MR. BUSH:

Q Mr. Little, please speak up in a loud, clear voice so that we can all easily understand you.

By whom are you employed?

A I am employed by a company called Florida Guarantee Land.

Q What position do you hold with the company?

A General sales manager for that company.

Q Briefly, what does that concern do?

A We are a land sales and development company in Florida.

Q Directing your attention back to 1967, by whom were you employed at that time?

A By a company called Cordwell International Developments, Limited.

Q What position did you hold with them?

A I was the secretary- treasurer of that company.

Q Did there come a time when Cordwell entered into negotiations with a company known as Pawnee to purchase another firm known as the Progressive Drug Company?

A Yes, sir, there was such a time.

Q In connection with these negotiations, did you

meet a man known as Larry Rosen?

A Yes, I did.

Q Would you point him out to the members of the jury, please?

A He is the gentleman sitting with his arms crossed.

MR. BUSH: Let the record reflect that the witness has properly identified the defendant.

Q Approximately when did you first meet him?

A It would have been in late 1966, early 1967.

Q As a result of the negotiations we have been discussing, did Cordwell become the owner of Progressive?

A Yes, they did.

Q About when did this occur?

A It was in October of '67.

Q Subsequent to the takeover what if anything did you have to do with the operations of Progressive?

A I was employed by Cordwell in a capacity to go to Progressive and help in the operation of that company. And I was there on a sort of daily basis for a time working there.

Q After the Cordwell purchase, did there come a time when you discovered certain payments totalling roughly $18,000 or $19,000, which had been expended and treated as travel and entertainment --

A Yes, sir.

Q -- by the Progressive Drug Company?

A Yes, sir.

Q Approximately when was this?

A This was reported to me by Price, Waterhouse, our accountants, in about April of '68.

Q Thereafter did you have occasion to speak to the defendant concerning these purported expenses?

A Yes, I did, sir.

Q When was this?

A This was at a meeting in the office of Mr. Hainick, Mr. Press' attorney Mr. Frankel, when Mr. Rosen was present at that meeting, when he was selling his stock to Sandy Burns.

Q Do you recall approximately when this was?

A This would have been the early part of '68. I can't remember the exact month. This would have been just after the accountants asked me about the expenditures.

Q What did you say to him concerning these expenditures and what if anything did he say to you?

A Price, Waterhouse asked me to find out about these --

Q Just relate the conversation you had with the defendant if you could.

A Okay. "Larry," I said, "I would like to know what this money was for. We need some type of substantiation as to what this money was used for."

And he told me that they were for travelling and entertainment expenses used in connection with Progressive Drug Company for the drugs. He would take drugstore people out to lunch and cab fares and different things, things that you couldn't get vouchers for.

Q To your knowledge, did the defendant own any shares

in 20th Century Industries?

A I was told by him that he was a major shareholder in that company.

Q To your knowledge in whose name were these shares held?

A They were held in the name of a gentleman by the name of Mr. Zuckerman.

Q Did there come a time when he sold these shares?

A Yes,there was such a time.

Q Was this the occasion when you were or part of the occasion when you were in this attorney's office that you just described?

A That is correct.

Q Would you describe what happened when the actual transfer of these shares took place.

A The shares were acquired by a gentleman by the name of Sanford Burns, who was the president of Cordwell, the company that employed me. And they agreed upon a price and how much and the terms of the sale, and Mr. Zuckerman was called to come over and sign the documents to effectuate the sale.

Q Why was he called to come over?

A Because he was acting for Mr. Rosen.

MR. BUSH: I have no further questions of this

witness.

THE COURT: Mr. Hoey?

CROSS EXAMINATION

BY MR. HOEY:

Q Mr. Little, how long were you connected with Cordwell?

A From 1966 to '69, the end of '69.

Q When did they start negotiations in regard to Progressive Drug?

A This was in late '66.

Q Where is Cordwell located?

A It has its head office in Toronto, Canada.

Q Were you part of the negotiations for the take-over of Progressive by Cordwell International?

A Yes, I was part of those negotiations.

Q Who was the other part of the negotiations on behalf of Cordwell?

A We had the president of the company, who is named John Quigley, we had an attorney whose name was Charles Port, a New York attorney, and there was a stockholder involved in Cordwell by the name of Lee Brooks.

Q Lee Brooks is the major stockholder, is he not?

A Yes, sir.

Q As a matter of fact he is your father-in-law.

A No, sir, he is not.

Q Are you related tohim?

A No, sir.

Q How long did the negotiations go on?

A They --

MR. BUSH: Objection at this point as to the relevancy of this. Moreover, it exceeds the scope of direct examination.

THE COURT: I don't know about the latter, but I don't really see the importance of the length of the negotiations. You must have something else in mind specifically. If so, why don't you ask him.

Q Did there come a time when you secured a certified financial statement of Progressive Drug?

A I'm sorry, I don't understand the question. Certified by whom?

Q Financial statement, yes, from an accountant.

MR. BUSH: Same objection to any further questions along this line.

THE COURT: It may have something to do with payments, so I will allow him some latitude. Go ahead.

A The Price, Waterhouse were never able to certify the statement, no.

Q Did you retain an accounting firm by the name of

Futerman, Berylson & Company?

A I think they were retained by Mr. Wainick and Mr. Press.

Q Did they submit to you a financial statement concerning Progressive Drug?

A We saw a financial statement prepared by them, sir, yes.

Q And that was certified?

A I believe it was certified.

Q Did that indicate travel and entertainment expenses in their financial statement?

A I cannot recall, sir.

Q Was that made available to you about July of 1967?

A That seems to be the right time for it, yes.

Q Was it after that that you retained Price, Waterhouse?

A Yes, sir.

Q To make an independent study?

A That is correct.

Q You spoke to Mr. Rosen concerning the travel and entertainment expenses?

A Yes, sir.

Q Did he tell you that he had expended monies in connection with the promotion of Progressive Drug?

A He told me that those funds were used for -- and I quote just about what I can remember -- they were for unrecorded travel and entertainment expenses.

MR. HOEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. BUSH:

Q Did there come a time when you asked Mr. Rosen for substantiation of those expenses?

A Yes, sir.

MR. HOEY: I object to this as improper, your Honor.

THE COURT: I must say, Mr. Bush, why couldn't you have gone into this on direct? I quite agree.

MR. BUSH: I think it is in keeping both with the direct and the cross of that direct.

THE COURT: That is where I don't agree with you. You could have easily and properly raised this on direct.

MR. BUSH: I think it is part of the same part and parcel, part of the same conversation.

THE COURT: That is why I am saying what I am saying. Don't quibble with me. I will allow this, and I will allow the defense to cross some more. I don't know quite what is going on here. Just because you have an afterthought is no excuse. If you want to press this, I will allow it,

but I will allow Mr. Hoey some more cross.

MR. BUSH: Could I have the last question and answer read, please.

(Question and answer read.)

Q When was that?

A This was at the meeting in the attorney's office, Mr. Frankel's office.

Q What if anything did he ever provide to you?

A Nothing.

MR. BUSH: No further questions, your Honor.

THE COURT: Anything, Mr. Hoey?

MR. HOEY: Yes, one question.

RECROSS EXAMINATION

BY MR. HOEY:

Q Mr. Little, Mr. Rosen had told you these were the expenses for which he could not get vouchers, is that correct?

A Yes, sir.

MR. HOEY: No further questions.

THE COURT: Thank you, Mr. Little. You may be excused, sir.

(Witness excused.)

THE COURT: All right, Mr. Bush.

MR. BUSH: Your Honor, I am faced with a small

dilemma. If I could approach -the side bar I could tell you what it is. I have a witness ready to call, but it creates another problem for me.

THE COURT: I will tell you what we will do. We will obviate the problem and we will excuse thejury to go to lunch. Would you be back today, ladies and gentlemen, at a minute or two before 2:00, instead of 2:15. We will hope to start at 2:00.

(The jury left the courtroom.)

THE COURT: May I suggest that probably your problem is 3500 material, which you ought to turn over now, plus any other material for the witnesses. This case is moving so slowly that I don't intend to countenance any other delays. We have had enough already.

MR. BUSH: The problem is simply this, your Honor: I have some people from Canada here. I told them I would put them on today. My other witness might be a lengthy witness, and if I started in with him before lunch, it might necessitate --

THE COURT: Fine. I don't quarrel with you on that. If you have 3500 material, I wish you would turn it over now so we don't brook any more delays. This case is flowing like cold glue, and it is a very simple case, to tell you the truth, and neither side seems to want to

recognize that. I don't mean to belittle its importance, but that doesn't mean it follows from the fact that it is important that you should delay matters.

Are those 3500 materials you just turned over to Mr. Musoff pre-marked?

MR. BUSH: Yes, your Honor.

THE COURT: I hope at some point you will indicate to the Court Reporter what the numbers are.

MR. BUSH: I think probably at the convenience of the Court, toward the end of the trial, I will give him a listing of all 3500 material.

THE COURT: All right. See you at 2:00, gentlemen.

(Luncheon recess.)

Two p.m.

[In open court - jury present.]

THE COURT: Now, Mr. Bush, I think you and Mr. Hoey are au courant.

MR. MUSOFF: Mr. Hoey stepped out for just a few moments. But I understand that the next witnesses to be called by Mr. Bush will be accountants and I have arranged with Mr. Hoey to handle these witnesses on behalf of the defense.

THE COURT: You are going to handle them ?

MR. MUSOFF: Yes.

THE COURT: Do you want to wait?

MR. MUSOFF: Yes, I'd rather have him here.

THE COURT: Here he comes. All right.

Can you identify this witness so we can call him, Mr. Bush?

MR. BUSH: I would like to take just a minute or two, your Honor, to read from one exhibit and to pass two other exhibits to the jurors before we call the next witness.

THE COURT: All right.

MR. BUSH: To begin with, I will pass what has been marked as Government Exhibits 12 and 12-A to the jurors and ask Juror Number look at them and then pass them along themselves.

At this time, I am going to read the second piece of a two-page document which has been received in evidence as Government Exhibit 29.

[At this point, Mr. Bush read Page 2 of Government Exhibit 29 to the jury.]

MR. BUSH: At this time I would hand Exhibit No. 29 to Juror Number 1.

Similarly, I am going to read the text of, or the relevant text of Exhibit No. 8-A. This is a letter on the stationery of Yankee Plastics dated March 26th, 1969 and it's addressed to Paul Curran, chairman, State Investigation Commission, 270 Broadway, New York, New York. It starts -- and I think now would be an appropriate time to advise the jury of the stipulation we entered into with respect to this particular letter, your Honor.

THE COURT: All right.

MR. BUSH: It has been stipulated by myself and the attorneys for the defendant that this particular letter was not actually sent to Mr. Curran or to the State Investigation Commission.

MR. HOEY: Or delivered to them.

MR. BUSH: Yes.

[At this point, Mr. Bush read portions of Government Exhibit No. 8-A in Evidence to the jury.]

JQR

MR. BUSH: Again, would hand this exhibit to Juror Number 1.

Might we give the jurors a moment or two to look at the exhibits that have been handed to them?

THE COURT: Yes.

MR. BUSH: During this interlude, your Honor, I wonder if there is any way to reduce the temperature a little. I find it a little hot in here.

THE COURT: I quite agree with you. This has been true for many, many months. Due to the setup in the building, I don't think there is any way to get relief except possibly to open a window which may then create a draft on the back of the jurors on this end. Let's try it in any event.

[Pause.]

MR. BUSH: The government calls as its next witness Theodore Greenfield.

T H E O D O R E G R E E N F I E L D, called as a witness in behalf on the government, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. BUSH:

Q For the sake of the Court Reporter, could you spell your name, please?

A Theodore, T-h-e-o-d-o-r-e, Greenfield, G-r-e-e-n-f-i-e-l-d.

Q By whom are you employed?

A I am actually a partner of a firm of chartered accountants in Canada.

Q What is the name of that firm?

A Harry I. Craimer, Greenfield, Mozetz, L'Ecuyer & Co.

Q Would a chartered accountant be the equivalent of a Certified Public Accountant in this country?

A Yes, it is.

Q How big is the Craimer firm?

A We are seven partners. We employ approximately 30 people in all.

Q How long have you been with it or its predecessors?

A I have been with the firm as it is presently constituted since its inception, which is July, 1965, and the predecessor firm since May, 1954.

Q Would you speak up just a little bit, Mr. Greenfield. I am finding it somewhat difficult to hear you.

How long have you been a partner with the firm or its predecessors?

A I was first named a partner in the predecessor firm in early 1958.

Q Did there come a time when your firm began to do accounting work for a concern known as Intercontinental Mangers LTD.?

A Yes. It was late in 1965, when the company actually was incorporated in Quebec.

Q What was the --

THE COURT: Excuse me, counsel. Incidentally, nobody wants to ask you, so I had better, Mr. Greenfield: Where are your offices?

THE WITNESS: In Montreal.

THE COURT: Thank you.

Q What was the nature of the work which your firm did for Intercontinental?

A We did certain original bookkeeping. We received certain information from the United States, which were

actually summaries of transactions. We then proceeded to the preparation of working papers and financial statements for the company.

Q Did there come a time when the firm recorded certain payments which had been made to a Larry Rosen and several other men as well?

A Yes. These were payments made in the normal course by the company.

Q What was the nature of the payments?

A These were weekly sums paid to Mr. Rosen and similar weekly amounts, not of the same quantum, to other individuals.

Q I show you a document which has been marked for identification as Government's Exhibit 19 and ask if you can identify that particular document.

A Yes. This is the record of cash -- or bank transactions for the period from January, '66 to October, 1966 of Intercontinental Hangers.

Q While I am standing next to you, try still to project your voice out across the courtroom.

A Right.

Q Was that particular document prepared by your firm?

A Yes, it was.

Q Was it a document which your firm prepared in the ordinary course of business?

A Yes, it did.

Q Was it the ordinary course of business for your firm to prepare such a document?

A Yes, it was.

Q Incidentally, for what period does that document reflect these particular payments?

A January, '66 to October, '66.

Q Check all the pages.

A And then it continues to January 31, 1967.

Q I show you another document which has been marked for identification as Government's Exhibit 19A and ask if you can identify that particular document.

A Yes. This is also a cash book recording the bank transactions from February 1, 1968, to October 31, 1968. There are other transactions then cash receipts from November 1, '68, to January 31, '69.

Q To what firm does it pertain or concern?

A Intercontinental Hangers LTD.

Q Again, was this particular document prepared by your firm?

A Yes, it was.

Q Was it prepared in the ordinary course of business?

A Yes, it was.

Q And was it the ordinary course of business for your concern to prepare such a document?

A Yes, it was.

MR. BUSH: At this time I would offer into evidence what has been marked for identification as Government's Exhibits 19 and 19A.

MR. MUSOFF: Your Honor, we have no objection to Government's Exhibit 19 for identification, no objection to Exhibit 19A on the grounds of a record kept in the ordinary course of business. I fail to see the relevancy of 1966 transactions, since the indictment only speaks to the years '66 and '67.

THE COURT: As I see it, the government is offering this incident to the testimony yesterday of Mr. Bertoli, which I allowed over defense objection. Correct, Mr. Bush?

MR. BUSH: That is right, your Honor.

THE COURT: To that extent, then, I will have to disagree most respectfully with the defense, and we will receive 19A.

MR. BUSH: And 19 as well, your Honor?

THE COURT: 19 there is no objection to. I am only commenting about 19A.

(Government's Exhibit 19 and 19A received in

evidence.)

MR. BUSH: Your Honor, I would just like to note one or two items on this, and I think we can have the jurors look at it while the witness is on the stand.

THE COURT: May I suggest, do you have any other questions for this witness?

MR. BUSH: Yes, I do.

THE COURT: Let us not interrupt for any more documents, if you don't mind. You can show those at a later date or read them or whatever you want, but let us finish the testimony.

Q How were the payments to Mr. Rosen recorded on the two documents which have just been received into evidence?

A The heading on the cash sheets referred to were labeled "Administration salaries, Larry Rosen," I believe.

Q Did there come a time when financial statements were prepared for Intercontinental for the fiscal year ending January 31, 1968?

A Yes.

Q Approximately when was such a document first prepared?

A At the end of 1968.

Q Prior to that time had a statement for Intercontinental

for that particular year been prepared?

A No.

Q Had a statement for Intercontinental for the two preceding fiscal years been prepared by that date?

A No.

Q What was the reason for this, if you know?

A The reason was that we did not have all the information necessary to complete the preparation of these financial statements.

Q I show you a document that has been marked for identification as Government Exhibit 22 and ask if you can identify that particular document.

A Yes, I can.

Q What is it?

A These are financial statements of Intercontinental Hanger Ltd. as of January 31, 1968, unaudited.

Q What is the difference between an audited and unaudited statement?

A An unaudited statement does not bear the opinion of the firm of auditors who is responsible to do so.

Q Is this, the statement to which you just made reference, the one which was prepared at the end of 1968?

A Yes.

MR. BUSH: I would offer what has been marked as

Government Exhibit 22 for identification into evidence.

MR. MUSOFF: Your Honor, no objection, with the same exception noted as to relevancy, since it is a 1968 document.

THE COURT: I am not entirely sure that is correct. Is it?

Q For what fiscal year does that statement cover, Mr. Greenfield?

A It covers the period from February 1, 1967, to January 31, 1968.

Q Perhaps you could explain to the members of the jury what a fiscal year is as opposed to a calendar year.

A The fiscal year is the reporting period representing a 12-month period of a company or an enterprise, and this can be different, of course, from a calendar year. In this case it was January 31.

Q Of 1968.

A Yes, sir.

Q Was that the closing date of that particular fiscal year?

A Of this particular fiscal year.

MR. BUSH: I would renew my offer.

THE COURT: To an extent this covers part of the calendar year '68, Mr. Musoff. I recognize that. But for

the reasons already suggested yesterday and today I am going to overrule your objection. In any event I note that the bulk of this statement covers the year 1967.

(Government's Exhibit 22 received in evidence.)

Q Directing your attention to that particular exhibit, how were the payments to Mr. Rosen and the other gentlemen treated in that statement?

A These were treated as loans receivable from these individuals.

Q When was the change in the characterization of these payments made?

A The change was made upon the finalization of the financial statements.

Q After the preparation of the statement to whom if anybody was it sent?

A These were sent to Mr. Manger, United States, to the officers of the company.

THE COURT: Let me see if I understand that, Mr. Greenfield. You say this treatment was changed from loans receivable to something else. What is that something else?

THE WITNESS: No, the change was from a treatment of items which were recorded, say, in the case of Mr. Rosen as administration salaries to loans receivable. In other words, they were removed as salaries and then reflected as being owed to the company by the individuals.

THE COURT: In the final financials which were sent to Mr. Manger in New York, were these sums paid to the

defendant Rosen and others treated as administrative salaries?

THE WITNESS: No.

THE COURT: You see, your testimony -- and the reason for my question is -- and I don't mean to be critical, but your testimony as I understand it was quite different. This is why I am asking.

Apparently you have been shown -- and I think maybe counsel has only served to confuse you -- but you have been shown 19 and 19A. As I understand it, on those documents the payments to Rosen and others were listed as administration salaries.

THE WITNESS: The amounts to Mr. Rosen were treated as administration salaries.

THE COURT: All right. You have also been shown an unaudited financial statement for the fiscal year ending January 31, 1968 which I understand you to say treated these payments to Rosen and perhaps others as loans receivable.

THE WITNESS: That is correct.

THE COURT: In the statement sent to New York to Mr. Manger, the parent company, are we to understand that that statement which was some kind of a final statement --

THE WITNESS: It was the unaudited financial statements referred to.

THE COURT: So that then we are to understand that

on this document those payments were treated as loans receivable?

THE WITNESS: Yes.

THE COURT: Thank you, sir.

Forgive me, counsel, go ahead.

Q When was the change in characterization made again?

A Upon the completion of the financial statements or the preparation of the financial statements. That is when the change was made.

Q By financial statements you are referring to Government's Exhibit 22?

A That is right.

Q And by date when would that have been?

A When was it completed you mean?

Q Roughly.

A At the end of 1968, just around December 1, 1968.

Q The change would have been made at the end of 1968?

A That is right.

Q I show you two documents which have been marked for identification as Government's Exhibits 21 and 21A and referring your attention first to Government's Exhibit 21, I ask you if you can identify that particular document?

A Yes, this is a copy of a letter which I wrote on

December 2, 1968 to Mr. Rosen care of Intercontinental Rangers in Long Island regarding the affairs of Intercontinental Rangers Ltd. in Montreal.

Q Was this letter sent to New York?

A Yes, it was.

Q I show you what has been marked for identification as Government's Exhibit 21A and ask you if you can identify that particular document?

A Yes, it was another letter dated December 2, 1968 adressed to Mr. Ranger, Inc., Long Island, to Mr. Nankoff, the controller, and the nature of the letter was enclosing the financial statements of Intercontinental Ranger Ltd. for the years ended January 31, 1966, '67 and '68.

MR. BUSH: I would offer into evidence what has been marked as Exhibits for identification 21 and 21A, Government Exhibits.

MR. MUSOFF: No objection, your Honor, to both exhibits.

(Government's Exhibits 21 and 21A received in evidence.)

MR. BUSH: I would also like to take this opportunity to pass to the jurors some of the exhibits and read from others. I have finished from my direct examination of this witness.

THE COURT: All right.

Just one minute, if you don't mind.

Thank you.

MR. BUSH: To begin with, I would hand to juror number one Government Exhibits 19 and 12A and ask him to pass them along noting, just for the purpose of locating it, this portion of the statement termed administrative salary, L. Rosen. I believe it appears on the second page of Government's Exhibit 19.

Similarly, I would hand Government's Exhibit 22 to the jury noting the third item under current assets as loans receivable.

Finally, I want to read to you Government Exhibit 21.

(At this point, Mr. Bush read Government's Exhibit 21 in evidence to the jury.)

MR. BUSH: At this time I would hand to the jury Government's Exhibits 21, which is the letter I just read, and 21A which is a brief letter to Mr. Mankoff, and the financial statement, but why don't you take your time.

(Pause.)

THE COURT: Mr. Bush, would you and defense counsel come up here to the side bar.

(At the side bar.)

THE COURT: It may well be that there are some legal rights for you to bore everybody to death but I haven't heard of it and I tell you that you have got some witnesses here whom you want to get out. Why the defense ever insisted that people like this be brought into verify these documents, I wouldn't know, but that certainly is their prerogative. But have you got any more of these because this is really enough to put anybody into deep anesthesia.

This is a very simple tax case, one of the simplest I ever encountered as a judge or a lawyer. We give great latitude in American trials but I think we are beginning to get in the outer limits.

MR. BUSH: Let me tell you what I had in mind and perhaps we can solve the problem mutually. I have here another accountant from the same firm who is more familiar with additional documents. I am willing to introduce them through this accountant and show them all to the defense attorneys. I am not sure there is any objection to any of them.

THE COURT: What I am getting at is this: Aren't you over-trying your case? What is the point? We know about these payments now. We don't just have Bertoli's testimony, we now have the documentation through Mr. Greenfield. It

seems to me that we are putting down an artillery barrage when a simple shot with a one-shot rifle would do the trick.

I don't understand what you are doing and I don't propose to see us sitting here going through all of this, because it just seems to me to be cumulative. Since you yourself have to recognize that it is expensive to keep these gentlemen sitting here for very little importance, I would think prudence alone -- and I realize prudence isn't one of our more obvious hallmarks in our profession. It never has been and doubtless never will be but from time to time I suggest we ought to struggle in that direction.

In other words, I don't see any need of any more documentation of these payments. Unless I am missing something, they are all there. Bertoli told us about them. The records tell us about it. What does repetition do?

MR. BUSH: Well, in fairness to everybody concerned I should point out that ultimately there was an audited financial statement made covering these payments. I had assumed, and I think I am correct in assuming this, that these accountants would have appeared whether I called them or the defense called them.

THE COURT: In other words, the defense wants to use these people somehow as their witnesses?

MR. BUSH: I would assume much of what we are

covering is material that we would have covered one way or the other, in any event. Maybe I am incorrect in that impression. As I say, I do have some other documents and they aren't terribly voluminous but there are a few that I want to introduce.

THE COURT: I don't want to get into an endless wrangle with you but do you see the point I am trying to make?

MR. BUSH: I do.

THE COURT: This case is really flowing like cold glue. In large measure that is not your view. The fact we had had jurors markedly late on both days is very discouraging and certainly none of the doing of the parties or the lawyers but it is not a very professional show so far. Again, obviously you are entitled to bring in anybody you want to bring in so far as we are not duplicating things or overtrying things. That is all I am concerned about.

I have the feeling we may be. So I just point this out to you and I point it out -- although they are not in the firing line -- to defense counsel. I have had the uneasy feeling, ever since I heard of this case, that it was going to be wildly overtried and I haven't seen anything to encourage me to take a more optimistic viewpoint.

It is by no means a difficult tax case, by no

means, and I don't mean to diminish its importance. As I say, it is important, of course. But all the more reason why we should not make a huge production out of really relatively simple questions to decide.

This delay is another good example. Can't you read these things to these jurors so they don't take an hour and a half to read them?

MR. BUSH: I suppose I will do that with the next set.

THE COURT: If it is that important there must be certain entries that are importnat to you. Why we dilate and dilly-dally like we do, I don't know.

I'm sorry, but I have been a participant in too many tax cases, civil and criminal, and I have to speak with what I consider some reasonable background in the problem and I don't think this is the best way to do it and we are just weighing everybody down.

I would suggest that if a document has to be shown it be shown but let us get the witnesses out of here, first of all, if we can. Second of all, read what you can read where there is a little nugget or portion that you want to get across. The same holds true with Mr. Hoey and Mr. Musoff. But a general wallowing in the papers is going to take us a long time. So try and see if you can think of

these things and I think it will go a little smoother.

Thank you.

(In open court.)

THE COURT: Has everybody had a chance to finish?

All right, very good.

Mr. Musoff, you said you were going to handle this witness.

MR. MUSOFF: Yes.

May I just have Exhibit 21?

MR. BUSH: Yes, sir.

CROSS EXAMINATION

BY MR. MUSOFF:

Q Good afternoon, Mr. Greenfield.

Your letter of December 2, 1968 to Mr. Lawrence Rosen, which is Exhibit 21 in evidence, refers to a Mr. Bertoli.

Was he the one that your office was dependent upon for necessary information?

A Yes. The normal course of communication was with him, such as it was.

Q Was he cooperative in furnishing such information to you?

MR. BUSH: Might we set the period of time involved here, your Honor?

THE COURT: I take it it is during the period we have discussed. If Mr. Musoff has some more specific time he can tell us.

Q You stated that you were first retained by Intercontinental Hangers during 1965 at the inception of that corporation, is that correct?

A That is correct.

Q Was Mr. Bertoli connected with that corporation at that time, to your knowledge?

A Yes, he was.

Q How long was Mr. Bertoli connected with Intercontinental Hangers?

A Well, to my knowledge, he was connected through 1966, through 1967 and through some period of '68. I don't know exactly when he did not -- he severed his relationship with the company. But I believe it was in '68.

Q During that entire period of time was Mr. Bertoli cooperative in furnishing the necessary information to you?

A No, he wasn't.

Q Was he the individual you had particular reference to as keeping your firm in the dark about the financial information necessary in connectionwith Intercontinental Hangers?

A Well, I think the reference was probably a more

global one but because the request for information went to him I guess in essence they were directed to Mr. Bertoli.

Q During the time that Mr. Bertoli was connected with Mr. Manger and Intercontinental Mangers, did you have any conversations with Mr. Rosen concerning the accountant treatment of any of the financial transactions of Intercontinental Mangers?

A No, we didn't.

Q Did Mr. Rosen instruct you to treat the payments he received from Intercontinental as salary when they were first recorded that way on your records?

A No, he didn't.

Q After Mr. Bertoli left the scene I believe your letter, Exhibit 21, indicates that you dealt with Mr. Mankoff, is that correct?

A Yes. The firm dealt with Mr. Mankoff. More specifically one of my associates, Mr. Hurwitz, had the direct communication with him.

Q And you described Mr. Mankoff as most cooperative unlike Mr. Bertoli, is that correct?

A That is correct.

Q With respect to the change in the accounting treatment of the payments to Mr. Rosen from salaries to loans, have you ever encountered this type of alteration or

change in accounting treatment in your professional experience?

MR. BUSH: Objection. It is irrelevant. Also he is not qualified and testifying in this case as an expert.

THE COURT: I am not sure I quite agree with either point. However, I think better put I would allow it to be rephrased as if he regarded either treatment as unusual in his experience.

Is that what you are seeking?

MR. MUSOFF: Yes, your Honor. What I am seeking from this witness is whether or not such a change in treatment is unique or whether this is something that goes on in a normally run accounting practice.

THE COURT: In other words, the simple answer to my inquiry is yes, correct?

MR. MUSOFF: Yes.

THE COURT: No doubt about it, is there?

MR. MUSOFF: That what?

THE COURT: Tell us please, Mr. Greenfield, did you regard either treatment that you described of these cash payments to Rosen and others as unique in your experience in any way?

THE WITNESS: No.

THE COURT: Next question.

Q In other words, you have encountered changes in the accounting treatment of financial transactions before in the course of your professional practice, is that correct?

MR. BUSH: Objection.

THE COURT: Sustained. It is only another way of putting the same question, Mr. Musoff. Let's get on with this.

Q In your opinion, is it improper to alter the accounting treatment of an item such as took place here?

MR. BUSH: Objection. He is not testifying here as an expert.

THE COURT: Mr. Bush, I don't quite agree with that. He is an accountant. Let's not make that kind of point again. I will allow that one.

Q In your opinion, is it improper to alter the accounting treatment of an item such as took place here?

A No, it is not improper.

THE COURT: Did you get some information from somebody that caused your office and yourself to make this change in treatment?

THE WITNESS: Yes, upon the finalization of the working papers in order to prepare these financial statements at this late date in 1968 we did communicate with Mr. Mankoff who was then the controller and we --

THE COURT: This was after Bertoli had left Mr.

Manger's employ?

THE WITNESS: That is correct.

THE COURT: Then this gentleman -- what is his name again?

THE WITNESS: Mr. Mankoff.

THE COURT: And he supplied you certain information from the Long Island City office?

THE WITNESS: That is correct.

THE COURT: Go ahead. Forgive me.

Q In the course of your professional practice did you ever find the converse to be true, where loans were altered to salaries?

A Yes.

Q Why, in your opinion, is the accounting treatment of various items changed?

MR. BUSH: Objection as to form.

THE COURT: You mean generally? What do you mean by that?

MR. MUSOFF: Generally in the course --

THE COURT: I will sustain the objection. Rephrase it.

If you want to ask him about why it came about here, that is fine, but not generally.

Q When Mr. Mankoff requested that the payments for

Mr. Rosen from Intercontinental Hangers be treated as loans rather than salary did he do it in a surreptitious manner?

A I am not aware of the communication because I was not involved in the communication. I think that question would have to be asked of Mr. Hurwitz.

Q Are you aware of how the request was made? Was it made by telephone or by letter?

A I don't know.

Q You don't know?

A No.

Q Did Mr. Rosen ever ask you to hide or conceal the fact that the accounting treatment of those payments had been altered from salaries to loans?

A No, he did not.

Q To your knowledge, did he ask anyone in your firm to conceal that fact?

A No, he did not.

Q Did Mr. Rosen ever ask you or anyone in your firm to destroy records or correspondence showing that the treatment had been altered from salaries to loans?

A No, he did not.

Q Would you consider that the change in accounting treatment as performed in your office to be a normal, routine accounting procedure?

A Yes, upon the completion of a financial statement it would be a normal thing.

Q And the records and correspondence in your office would reflect that change for anybody to see?

A Yes.

Q Did anyone from the Internal Revenue Service, the United States Internal Revenue Service, appear in your office to look at such records?

A Yes.

Q And the fact that Mr. Rosen received payments from Intercontinental Hangers was readily apparent to them as it would be to anyone else from those records and the correspondence in your office?

A Yes, all the records were made available.

Q And the fact that the accounting treatment had changed from salaries to loans was also readily apparent, right?

A Yes.

Q Do you know the reason why the entries concerning the payments to Mr. Rosen were first entered as salaries rather than loans?

MR. BUSH: Objection as to the form of the question.

THE COURT: Yes, I must say offhand that I think I agree.

MR. MUSOFF: I'm sorry, your Honor, I didn't hear your ruling.

THE COURT: I don't understand even from your point of view how you can expect this witness to tell us the state of mind of some stranger or apparent stranger to him. I don't follow you at all. You can't mean that. Why don't you try it again.

I gather you never discussed these changes in accounting treatment with Mr. Rosen, or perhaps he was known to you as Mr. Rosenrauch, himself?

THE WITNESS: No, we knew him as Mr. Rosen and it was not discussed with him.

THE COURT: You discussed it, as you told me, with this man Mankoff?

THE WITNESS: That is correct.

MR. MUSOFF: I understand your Honor's ruling, your Honor. I will rephrase my question.

THE COURT: That is what I am suggesting you do, hence the suggestion.

Q Mr. Greenfield, at the time that the entries were first made on your records indicating that the payments were characterized as salaries were you under any instructions or was anyone in your firm under instructions to so characterize those payments?

A I am really not sure. I don't frankly remember whether we had specific instructions or not.

MR. MUSOFF: No further questions, your Honor.

THE COURT: Any redirect, Mr. Bush?

MR. BUSH: No further questions.

THE COURT: Thank you very much, Mr. Greenfield, you may be excused.

(Witness excused.)

MR. BUSH: The government calls as its next witness William Hurwitz.

W I L L I A M H U R W I T Z, called as a witness in behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Hurwitz, what is the nature of your work?

A I am a chartered accountant.

Q With what firm are you associated?

A I am associated with the firm of Harry I. Crainer, Greenfield, Mozetz, L'Ecuyer & Co. in Montreal.

Q How long have you been with them?

A I have been with them since May 1, 1968.

Q What position do you now hold?

A I am now a partner.

Q How long have you been a partner?

A I have been a partner since October, 1971.

Q Did there come a time when you were given the Intercontinental Hangers Ltd. account?

A Yes.

Q Roughly when was that?

A The fall of 1968.

Q At that time did you begin to prepare financial statements for the fiscal year ending January 31, 1969?

A Yes.

Q I show you a document that has been marked for identification as Government's Exhibit 20A and ask you if you can identify that particular document?

A These are the total set of working papers for the fiscal year ended January 31, 1969.

Q For what purpose if any did you put these papers in?

A These papers are put together in order to support the financial statement that was prepared.

Q Did you prepare all those papers?

A No, not all of them, only part.

Q What portion did you prepare and what portion did another individual prepare?

A I prepared basically the second half that related

to the finalization of the statement. The first half involving the grading up of the cash journal was prepared by a member of our staff.

MR. BUSH: At this time I offer Government's Exhibit 20A into evidence.

MR. MUSOFF: No objection, your Honor.

(Government's Exhibit 20A received in evidence.)

Q Directing your attention to the top of the first sheet, the smaller size paper, I note an entry number one there which is denoted journal entry number one. I ask you what if any change was made in that particular journal entry after it was initially prepared?

A After it was initially prepared -- well, the final version of the adjusting entry reads charge to the loan

to Lawrence Rosen for $13,315.

Q How was that --

A Also the other items to Bertoli and Benjamin Zuckerman, the words were added "loan receivable."

Q How was that initially treated?

A This was initially treated by my staff as a salary for the four individuals.

Q Based on these particular work papers was an unaudited statement for the fiscal year January 31, 1968 actually

prepared?

A Yes.

THE COURT: Anything else of this witness?

MR. BUSH: I have a few other things, your Honor.

THE COURT: I neglected to see how late it was. I wonder if you would mind an interruption for the afternoon recess.

Is that all right?

MR. BUSH: I have no objection.

THE COURT: Ladies and gentlemen, we will take a recess for five minutes or so.

(Jury left the courtroom.)

THE COURT: Mr. Bush, at the risk of sounding like a broken record, this to me seems exactly a good case in point. We have got the same accountants treatment once again. Why are you over-proving this? I don't understand it. There is no issue here about this or I doubt that there can be now. Why do we have to have two accountants to establish one set of facts? I just don't get it. In fact, I don't even get why we need the work sheets in evidence.

Look, it takes you so long with your explanations I almost rather not hear it except simply to say that I ask you not to prove everything twice that has to be proved.

Is there anything new or am I wrong here? I see nothing in the world different than what Mr. Greenfield, his senior partner, has already told us so far.

American trials just can't afford this kind of luxury. The system is already endless enough. But whether the trials can afford it or not from your own adversarial point of view, I really don't understand this.

Am I correct? Once again we know that Lawrence Rosen got these payments. First they were treated as administration salaries and now they were changed as treatments for loans receivables.

MR. BUSH: I think that is the sum and substance of the testimony that has been presented, your Honor. I point out again that much of this testimony is going to come in in one form or another.

THE COURT: That is no excuse. I long ago heard that the defense was going to spend days on this. It isn't worth it from anybody's point of view. Don't be buffaloed by that.

MR. BUSH: I am not being buffaloed --

THE COURT: Just because you think the defendant is going to get into it doesn't charge you with getting into it twice or three times.

MR. BUSH: The reason for calling the second

accountant is simply that there were subsequent audited statements issued and then changes in the audited statements as well.

THE COURT: But then why fool around with his work papers? If that is so let us get to it. That is the whole point.

MR. BUSH: I had planned really to jump to the audited papers and then the confirmations that had been sent out and that would be basically it with this particular accountant. I do think changes in the financial statements which were made have a probitive value.

THE COURT: Agreed, but that doesn't mean you prove it three, four and five times. I see the significance of relevance of this, not even the defense can argue with that.

My argument with you is the lengthy, totally anesthesia-inducing delays we are encountering in this case which for the life of me I don't see why any lawyer would want to be a party to it, particularly when he has proved something.

MR. BUSH: I have looked at the particular documents here and attempted to eliminate the portions --

THE COURT: One of the best things you could have done from your own statement is to eliminate the accountant's work papers. You tell me what you really want from Mr.

Hurwitz is the final audited statement, fine.

MR. BUSH: There were several audited statements.

THE COURT: Fine again, but let us get to them without all this willy-wallowing around. If we go on much longerlike this, this is just going to be a totally distorted presentation.

I just don't understand you, of all people, wanting to do this. Let us see if we can get to the point and not fool with any pieces of paper just because they come from his office and are business records.

(Recess.)

(In open court - jury present.)

THE COURT: All right, Mr. Bush.

BY MR. BUSH:

Q Who if anybody directed the change in accounting treatment of these payments to be made?

A Mr. Mankoff.

Q In what form was this direction, was it a phone call or a letter?

A This direction was by phone call.

Q Roughly when was that phone call? In point of time, that is.

A We are talking about the 19 -- which statement are we talking about?

Q The fiscal year January 1, 1968 statement and the change that I just referred you to in your work sheets. You said there was a phone call with Mr. Nankoff. I would like to place the rough date on that phone call.

A I would say this was sometime towards the end of 1968.

Q What was said in that conversation?

A That the amounts should be set up as loans receivable from the various employees.

Q What if anything did Mr. Nankoff say with respect to Mr. Rosen in that conversation?

MR. MUSOFF: Your Honor, I object to the question.

THE COURT: Yes, I will sustain that as to form.

Q What if anything was said internally at Mr. Manger in New York as to who had decided to make the change?

MR. MUSOFF: Your Honor --

THE COURT: How could he know what was said in New York internally?

MR. BUSH: I am referring to this particular phone conversation.

THE COURT: Don't you think the better and fairer way to ask this is: Whether or not he recalls anything else being said by Nankoff.

Q What if anything else was said by Nankoff, if you

could give us as much of the substance of the conversation as you can?

A I don't remember anything else.

Q Did Mr. Yankoff say anything about Mr. Rosen's role in directing a change?

MR. MUSOFF: If your Honor please --

THE COURT: Sustained as to form.

Was there any mention, that you can recall, of Mr. Rosen, Mr. Hurwitz, in this conversation?

THE WITNESS: There might have been a mention that Mr. Yankoff said he would talk to Mr. Rosen or receive the answers and get back to us and then he told us Mr. Yankoff, who was the only person I talked to, he explained to us that this should be treated as a loan.

Q Did there come a time when an audited statement was prepared for fiscal year ending January 31, 1968 and also for the fiscal year ending January 31, 1969?

A Yes.

Q What if anything did you require from Mr. Hanger before preparing such audited statements?

A In order for the statements to be audited I think the item that you are looking for is that we required confirmations that the various loans receivable that we were going to show on the balance sheets still existed.

Q Did you prepare such confirmations?

A The confirmations were prepared.

Q Were they then sent to New York?

A Well, I don't know if our office prepared them and then sent them to New York for signing or if Mr. Nankoff or his office prepared the confirmations, had them signed and sent to us. I believe we probably sent them to New York to Mr. Nankoff.

Q What individuals were covered by the confirmation?

A Mr. Bertoli, Mr. Zuckerman, Mr. Rosen and Mr. Birnbach.

Q For whom, if anybody, did you receive confirmations back?

A Mr. Birnbach, Mr. Zuckerman and Mr. Rosen.

Q I show you three documents which have been marked collectively as Government's Exhibit 27-A and ask you if you can identify those documents?

A These are confirmations which were signed by Messrs. Posen, Zuckerman and Bernbach that their respective loans receivable dated January 13, 1969 were still indebted to the company.

MR. MUSOFF: No objection, your Honor.

(Government's Exhibit 27-A received in evidence.)

Q I show you a document identified or marked for identification as Government's Exhibit 28 and ask you if you can identify that particular document?

A This was a letter sent by our office to Mr. David Nankoff in New York enclosing a draft copy of the financial statements for the year ended January 31, 1969.

Q I show you a document marked for identification as Government's Exhibit 33.

A This is the actual audited financial statement of Intercontinental Hangers Ltd. as at January 31, '69.

Q At what date was that prepared?

A That was dated July 28, 1969.

Q I show you a document marked for identification as Government's Exhibit 31.

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A This was a letter to Mr. Nankoff in New York enclosing the normal copies of financial statements which was just referred to for January 31, '69.

MR. BUSH: I would offer into evidence at this time Government's Exhibits 28, 31 and 33.

THE COURT: 28 is an audited statement or is that just a letter?

MR. BUSH: 28 is the letter which sent a draft of a financial statement to New York.

33 is an audited statement for January 31, 1969 and the statement itself is dated July 28, 1969.

Government's Exhibit 31 is the August 6th letter of 1969 which forwarded that particular statement to New York.

MR. MUSOFF: No objection, your Honor, to each of these.

THE COURT: You don't object to any of these?

MR. MUSOFF: That is correct, your Honor.

(Government's Exhibits 28, 31 and 33 received in evidence.)

Q At about or after the time you had sent off to New York the audited statements for the fiscal year ending January 31, 1969 did there come a time when there was a request made to recast that particular statement?

A Yes.

Q I show you a document marked for identification as Government's Exhibit 30-A and ask you if you can identify that particular document?

A This is a letter sent from New York to Intercontinental Hangers signed by Mr. Larry Posen authorizing our firm to recast the financial statements of Intercontinental for the fiscal years ended January 31, '68 and January 31, '69 to reflect the royalty income and advances from Mr. Hanger, Inc. of Quebec in the appropriate years.

Q I show you two documents, the first of which is marked Government's Exhibit 22-A for identification and the second which is marked Government's Exhibit 33-A and turning your attention first to 22-A, I ask if you can identify that document?

A Exhibit 22-A is an audited financial statement for the period ended January 31, 1968 reflecting the recasting requested by Mr. Rosen in his letter which we just referred to.

Q What change, if any, was there in this statement as compared to the earlier unaudited statement prepared at the end of 1968 for the fiscal year ending January 31, 1968?

A The basic change in this statement was that additional royalty income of $15,000 was previously shown in the year ended January 31, '69. It actually applied to January 31, 1968. So what we did was merely transferred back to the year that it represented.

Q So there was more income in this particular statement, reflected in this statement for the year ended January 31, 1968 than there was originally, would that be correct?

MR. MUSOFF: May I inquire at this point as to the relevancy of this?

THE COURT: That is why I raised, pointedly as I did, a few moments ago, whether you objected to these earlier matters.

MR. BUSH: I am willing to make an offer of proof at the side bar with respect to this matter.

THE COURT: I have encouraged you twice to think about this, Mr. Bush. I am a little discouraged to hear about this at this hour, Mr. Bush. I really am.

MR. BUSH: I think I can make it clear by virtue of the offer of proof, your Honor.

THE COURT: In fairness to you I have to listen to you, I suppose.

Come up, gentlemen.

(At the side bar.)

THE COURT: Mr. Bush, let's get on with it.

MR. BUSH: I think first that all of these documents obviously relate to the payments which were made and in that sense, without any further offer, they could be relevant. But secondly, the Government is going to --

THE COURT: Don't pass over that too quickly. I have no reason to know that the $15,000 royalty payment so-called transferred back from 1969 to 1968 have anything to do with these payments to the defendant at all. I just have no reason to assume that.

MR. BUSH: Secondly, the Government is going to contend that really there was no intention ever to produce a financial statement, whether it be audited or otherwise for the fiscal year ending January 31, 1968 when the defendant, who was in charge of the parent company and also in charge of the subsidiary, found out that such a statement had to be prepared. The Government will contend that he was interested, one, in of course making these loans because he had not reported them as income in his tax returns, and two, also in making statements such that it did not appear that he and the other people were receiving these monies from the company, they had actually stolen them or embezzled them.

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THE COURT: This is proven eloquently but you don't know what you are talking about. May I see these proffered exhibits please.

MR. BUSH: I think you will see if you look at the statements --

THE COURT: Where are the exhibits?

MR. BUSH: I will get them, your Honor.

If you examine that particular statement you will see from the examination of it that in the absence of calling these particular items or payments as loans the balance sheet would show that there was, in the way of liabilities, a loan payable to the parent company from Intercontinental in the neighborhood of $55,000. That in effect there would be no assets whatsoever, to speak of, at all and there would be a negative net worth of some probably 28 or $30,000.

The Government is going to contend that first, in and of itself, such a statement is, if not inappropriate I don't really know how to phrase it.

THE COURT: That is the problem.

MR. BUSH: It's unusual --

THE COURT: I have told you thrice this afternoon that you are likely overproving your case. The more you talk the more you are convincing me of that.

22 and 33 are already in evidence. I want to see 22-A and 23-A and --

MR. BUSH: 22-A and 23-A.

I might also say that as a third reason for this particular offer of proof, your Honor, as of March 15, 1968 in the merger agreement between Mr. Hanger and Yankee Plastics it was represented that Mr. Hanger had $150,000 in the way of net assets. The financial statements of Mr. Hanger will show that in reality it did not have that figure and if in fact the investment in these particular subsidiaries was not as it was the figure would be substantially less.

THE COURT: Mr. Bush, I am not going to try but once more. This is all very interesting and I will assume it is true but it has nothing to do with the four counts here on trial except at best tangentially and why the Government is so hell bent to take a simple tax case and make it a bamboozlement of everybody, I don't understand. You surely aren't here to bamboozle or obfuscate the proof against this defendant which up until this point was crystal clear, but you are trying to make a big complicated deal that somebody downstairs has explained to you as being razzle dazzle something or other and it isn't anything at all.

I have no doubt that this is true but it has nothing to do with our case.

MR. BUSH: I think it has a direct bearing on the motive for making such changes as there were. The defense is going to argue, I think, that these changes were innocently made and had no knowledge --

THE COURT: But they haven't. Honestly, you are trying to prove everything.

MR. BUSH: As represented to me, this was the argument that they have made. I think it is an argument they have made throughout.

THE COURT: I am not going to receive these because I just think this is going beyond the pale of the indictment at this point. Second of all, I am not even sure, if the defendants do raise this, that they would be well advised to do it but assuming they do I will certainly let you come back on rebuttal if we have to get into this. But we have got four counts. Those counts have been proven already, in my judgment, at least enough to go to a jury.

Let's not start obfuscating things in anticipation of what the defense may or may not do.

So the ruling is at this point I will not receive 33-A and 22-A not because they are incompetent,

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as Mr. Musoff agrees they are, but because at this point I have no basis to concede their relevance.

MR. BUSH: Might I do this:

Might I lay a basis, a foundation for their admission at this point because --

THE COURT: No, you have a witness on the stand.

MR. BUSH: This is the end of this particular witness' testimony. This witness will not be available for recall. May I lay the basis for these two documents --

THE COURT: I said they are not deemed incompetent That is what I mean. Mr. Musoff conceded as much when he didn't object.

MR. MUSOFF: I do.

THE COURT: They are authentic documents in your view?

MR. MUSOFF: Correct.

THE COURT: I don't understand what you are talking about again, Mr. Bush. I really don't. If you want to ask him whether his office prepared these again, you certainly may.

MR. BUSH: I think I just have one more document to lay the groundwork for them.

THE COURT: I despair to listen to this.

MR. BUSH: I think I can prove to your Honor

that they are relevant. I want to lay the foundation for the subsequent admission that even if you rule them inadmissible at this time --

THE COURT: That is fine but ask the witness whatever it is you want the answer for. If you have another document for him to identify, go ahead and identify it. Maybe this next one is relevant.

I am ruling on these two and I sustain the objection at this point.

MR. BUSH: I have two other documents which I will lay the foundation for and that will be the end of it.

(In open court.)

THE COURT: I sustain the objection to the last question and I will not receive, as I told you at the side bar, Government's Exhibit 22-A and 33-A, at this point at least. There is another exhibit which you identified but I couldn't understand what you said.

It's a letter from Mr. Rosen.

MR. BUSH: I think your Honor is making reference to Government's Exhibit 30-A.

Perhaps we can have the witness state if he knows what that particular document is.

THE COURT: He has already told us. We don't

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have to have that repeated.

I didn't get the exhibit number because I could not tell whether it was 38 or 30-A.

MR. BUSH: It's 30-A.

THE COURT: The same ruling pertains to that.

MR. BUSH: Lastly, I am sure your Honor will make the same ruling with respect to it but nevertheless, so as to lay a foundation possibly for it at a subsequent time, I show you what has been marked as Government's Exhibit 32 and ask you if you can identify that particular document?

A This is a letter sent by our office enclosing the recasted financial statements for January 31, '68 and 1969 as requested by the client.

MR. BUSH: No further questions.

THE COURT: The two statements recast were 1968 and 1969 fiscal years, right?

THE WITNESS: Right.

CROSS EXAMINATION

BY MR. MUSOFF:

Q Mr. Hurwitz, when were the underlying work papers prepared by your firm concerning the fiscal years January 31, 1967, 1968 and 1969 prepared?

A The work was prepared basically in 19 -- the

fall of '68 and in the summer of 1969.

Q For all three of those fiscal years?

A '66, '67 and '68 were prepared at one time i the fall of '68. The recast statements and the '69 statement were prepared in the summer of '69.

Q Did the recasting of the Intercontinental Hanger financial statements have any effect on the tax liabilities of that corporation?

A The recast statements had no net effect on the tax liability of the corporation.

THECOURT: Are you talking about Canadian tax liability?

THE WITNESS: The company was a Canadian company so the corporation is liable for Canadian taxes.

Q Does the tax return of those Intercontinental Hangers have to be changed in any way as a result of the recasting of those financial statements?

MR. BUSH: I am going to object to whatever tax -- I don't see it has any relevancy at all.

MR. MUSOFF: This is a tax case and I would assume --

THE COURT: Just a moment, gentlemen. First of all, I regard this question as being merely another wayof putting the question I allowed. He told us it had

no impact on the Canadian corporate tax responsibility of Intercontinental. I see no reason to put that in another form which I understand your last question simply to be.

Let's get to something else.

Q Do you know the purpose of recasting those financial statements?

MR. BUSH: Objection as to form, your Honor.

THE COURT: Sustained as to form. Recall that the witness has already told us, sir, that he did this as a result of certain phone calls and other information received from one Mr. Nankoff. Am I co-rect, Mr. Hurwitz?

THE WITNESS: And from a letter received from Mr. Rosen.

THE COURT: All right. So I would think from your own point of view you ought to rephrase it and sharpen it up.

MR. MUSOFF: Does the Government possess that letter?

MR. BUSH: I believe it's been introduced into evidence.

THE COURT: It has been identified but not received.

MR. BUSH: This letter was one of the documents objected to.

THE COURT: I agree but that doesn't mean he can't

see it.

Q Did you discuss the recasting of these financial statements with Mr. Rosen?

A No, not with Mr. Rosen.

Q You discussed them with --

A With Mr. Nankoff and with the firm of auditors who were involved with Mr. Hanger,Inc. in New York.

Q Were you informed as to the purpose for the recasting of the statements?

A The purpose for the recasting --

MR. BUSH: Objection as to hearsay, your Honor, and also as to who informed him of what.

THE COURT: Wait just a minute. You yourself asked questions of what he and Mr. Nankoff discussed, do you remember that?

MR. BUSH: I am not sure that this is a conversation of Mr. Nankoff with the auditors, with the auditors or who it is with.

THE COURT: Mr. Hurwitz, you just told us you didn't discuss this with Rosen himself, correct?

THE WITNESS: Right.

THE COURT: You did discuss it, as I understand it, solely with Nankoff representing this company called Mr. Hanger?

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THE WITNESS: Mr. Nankoff was the controller of Mr. Manger.

THE COURT: Right.

THE WITNESS: And I discussed it with him together with the representative of the auditors of Mr Manger, Inc.

THE COURT: What were their names?

THE WITNESS: This I don't know.

THE COURT: Do you know with whom in that firm you conversed?

THE WITNESS: No. I know I did because I remember Mr. Nankoff referring me to their auditors so as to explain the reason for the recasting.

THE COURT: The ruling is that if you want to direct your question as to what he learned as the purpose of anything from Mr. Nankoff, fine, but otherwise, no.

Do you follow me, Mr. Musoff?

MR. MUSOFF: Fine, your Honor.

THE COURT: All right.

Q Did you learn from Mr. Nankoff the purpose for the recasting of the financial statements of Intercontinental Mangers?

THE COURT: In other words, did he say anything about his understanding of the purpose?

THE WITNESS: It's putting me in a very difficult situation because I know exactly what the reasons were for the request. At this moment, three, four years later, I do not remember exactly if it was Mr. Nankoff who explained to me the reasons or if it was a representative of the auditing firm. But I do definitely remember the conversation and that I talked to the people concerned.

THE COURT: Was the firm called Futterman and something?

THE WITNESS: I honestly couldn't tell you. I wouldn't want to say it was John Smith & Company because I couldn't remember. I think I know it was a big national firm. Who it was, I would only be guessing as to who it was.

THE COURT: Well, Mr. Musoff, if you can help him out with any information you have, why, let's see what happens.

MR.MUSOFF: Can we just inquire as to what the reasons were that he learned? This is all I want out of this witness.

THE COURT: The only trouble is since he doesn't know who was talking that might make a difference. There I would sympathize with Mr. Bush if he objected.

Q Does the name Haskins & Sells refresh your memory?

That is, as to the accounting firm of Mr. Hanger?

A It could very possibly be. I seem to recall that name being involved.

THE COURT: Are you able to tell us that it was either some representative of this firm whose name you cannot recall or Mr. Nankoff and nobody else?

THE WITNESS: Yes.

THE COURT: All right.

Does the Government object to that? In other words, possibly I might consider letting Mr. Musoff ask what the stated purpose was so long as it was coming from one of those two sources, either Nankoff, the Mr. Hanger controller, or this Haskins & Sells firm or whatever it was that was purporting to be the outside accountants for Mr. Hanger, Incorporated and its management.

MR. BUSH: In light of the indefiniteness of the outside accountants, yes, the Government would object. I don't believe it was Haskins & Sells.

THE COURT: Maybe it wasn't. I don't say it was. I am just using them as an example. But you do object?

MR. BUSH: I do object because I don't know what outside accountants it might have been.

THE COURT: All right. I am afraid I am going to have to sustain that because we have no way of getting at the source. Unless you have something to refresh

the witness' recollection.

MR. MUSOFF: May I make just one more stab at it by putting it this way:

Was the stated purpose one for tax purposes or some other purpose?

MR. BUSH: Same objection, your Honor. We are just getting into the back door when you can't get into the front door.

THE COURT: Sustained.

Anything else?

MR. MUSOFF: Yes.

Q You stated during your direct testimony that you received a telephone call from Mr. Nankoff requesting that the accounting treatment of the payments to Mr. Rosen from Intercontinental Hangers be changed from salaries to loans.

Did those instructions take any other form other than a telephone call?

A No, not until the financial statements were subsequently recasted. Subsequently in 1969 we did receive confirmation of the loans. I am sure that we received confirmation for the loans as of January '69. I would assume we received confirmations in January '68 but I haven't got the records on that.

Q Was the request to change the treatment from salaries to loans made in a secret manner or a surreptitious manner?

A No.

Q Did Mr. Rosen ever ask you to hide or conceal the fact that the treatment of those payments had been changed from salaries to loans?

A No.

Q Did Mr. Rosen ever ask you to destroy any of the records in your firm, either the work papers or correspondence concerning the treatment of those payments?

A No.

Q Did the records maintained by your firm clearly reflect that payments had been made to Mr. Rosen by Intercontinental Hangers?

A Yes.

Q Did those records also clearly reflect that the treatment had been changed from salaries to loans?

A Yes.

Q As a matter of fact, didn't the financial statements, the audited financial statements prepared by your firm indicate that payments to Mr. Rosen were treated as loans?

A Yes.

MR. MUSOFF: No further questions.

THE COURT: Any redirect?

MR. BUSH: No further questions.

THE COURT: Thank you, Mr. William Hurwitz, you may be excused, sir.

(Witness excused.

THE COURT: Ladies and gentlemen, it is not quite 4:30 but rather than start another witness perhaps we might be wiser to suspend now until tomorrow morning at 10:00 o'clock. So we will hope that no one will have the totally unexpected experience that poor Mrs. Gibbs had this morning and we will start again tomorrow morning at 10:00 o'clock, see you then.

(Jury left courtroom.)

THE COURT: Incidentally, gentlemen, the record ought to reflect that this morning in the recess I conversed with Mrs. Gibbs. You were in the room but I don't think you paid much attention, but if you did I am not sure you heard what she said. She was riding in the subway and a person seated next to her was unfortunately ill and became so over her person. They advised her to go home to change her clothes. She assisted this other person off the train to the doctor or hospital. Mrs. Gibbs certainly justified her delay in that.

I return to you, Mr. Bush, Government's Exhibit 22 and 23 already in evidence.

How many witnesses more does the Government have at this present accounting? I am not trying to tie you down but I want an approximation.

MR. BUSH: In light of your Honor's remonstrations I think I will cut down the number. I would think it would be roughly five or so.

THE COURT: I would think so. This is the kind of tax case which ordinarily should be tried -- although perhaps there are good reasons why not, to an extent -- should be tried in two days from stem to stern but be that as it may, I will see you gentlemen tomorrow morning and we will get started at 10:00 o'clock tomorrow morning.

(Adjourned to February 27, 1974 at 10:00 a.m.

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UNITED STATES OF AMERICA

vs. 73 Cr. 408

PAUL LAURENCE ROSENBAUM

New York, N. Y.
February 27, 1974

(In open court - jury present.)

THE COURT: Good morning, ladies and gentlemen.

MR. BUSH: The government is calling as its first witness Henry Hainick.

H E N R Y H A I N I C K, called as a witness in behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Hainick, please speak up so that we can all hear you clearly.

Where are you employed, sir?

A I am an executive with Richmond Recording Corporation. That is at 75 Rockefeller Plaza.

Q Briefly, what does the Richmond Recording Corporation do?

A We press records and we duplicate tapes.

Q By education and training do you have another profession as well?

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A Yes.

Q What is that?

A I am a lawyer.

Q Are you admitted to practice in this state, sir?

A Yes.

Q When were you so admitted?

A 1934.

Q Did there come a time when you became financially interested in a firm known as Progressive Drug Company?

A Yes.

Q Roughly when was that?

A 1965.

Q Would you relate the events leading up to that particular financial interest?

A The company was brought to my attention as a possible candidate for acquisiton and I entered into an agreement with the company. I organized a corporation called Pawnee Drug Company for the purpose of acquiring all the stock of Progressive Drug Company from the estate of Samuel Steckler.

I did not have the funds to complete the transaction. Mr. Press and myself were partners. We borrowed $30,000 for the deposit and then we could not get the balance of the funds. We attempted to get them through

several companies and finally Mr. Rosen suggested that we make the deal with 20th Century Industries, Inc. Which we did. We assigned 100 percent of our ownership of Pawnee to 20th Century and Mr. Press and I each received 5 percent of the stock of 20th Century. 20th Century thereupon became the sole 100 percent owner of Progressive Drug.

Q Whatrole if any did Martin and Sam Goldman play in this series of events?

A They controlled the company. They had mathematical and actual control, operating control, of 20th Century, and they directed the enterprise entirely.

Q What role if any did Joseph Abrams play in this series of events?

A Only to advance funds to me. At the time that Pawnee put up the deposit, that is.

Q You mentioned the name Mr. Rosen. Do you see that Mr. Rosen in this courtroom here today?

A Yes.

MR. MORY: Identification conceeded.

Q Approximately when was the actual purchase by 20th Century using the vehicle Pawnee, of Progressive accomplished?

A The closing was as of December, 1965 but we took possession sometime in January of 1966.

Q After you took possession what role if any did you play in the actual operations of Progressive?

A Mr. Press and I were employees, co-managers of the company.

Q How long did you remain in that position?

A November, 1966. '67, I think it was.

Q Would it be 1967?

A Yes, '67.

Q During the time that you were associated with Progressive was the defendant either an employee or an officer of the firm?

A No.

Q During this time what if anything did he do on behalf of the company?

A He worked with us on cash flows and some of the money things. He worked with the financial company, Commercial Credit Company, that was advancing funds to us on the accounts receivable and he helped us a great deal.

Q When you say he worked on the cash flow, when did this particular aspect of his activities take place?

A For the first few months after we took over and then when the company couldn't check the losses, the company had losses for three or four years, but when we couldn't complete the turn around he came in and worked hard to see

jqk

if we could straighten out the cash flow and get availability of funds for us.

Q He worked for the first few months and came back at a later period of time?

A He was there but not as often when it was running all right.

Q When did he start coming back with more regularity?

A About October, 1966, I would guess.

Q To your knowledge, what role, if any, did the defendant play in contacting suppliers of the items which Progressive sold?

A You mean customers?

Q I mean the people that supplied the company, Progressive being their customer.

A I don't recall that he played any role.

Q To your knowledge, what role if any did he play in contacting customers of Progressive? By that I mean retail drug stores.

A I don't recall anycontact of his with customers.

Q Would it be fair to say then that his role in the company was principally that of advising on financial matters?

A Yes, and analysis of financial controls.

Q To your knowledge, what if any expenses did the defendant incur during his activities on behalf of Progressive?

A I don't know.

Q Do you know of any?

A I don't really recall except he did go to Florida to help conduct the sale of the place. He went with me.

Q Excuse me?

A When we sold the company we went to Florida together.

Q When was that?

A '67.

Q Whom did you contact in that connection?

A Mr. Brooks.

Q Other than that one trip to Florida in connection with the sale of the company, to your knowledge, did he have any expenses incurred in behalf of Progressive?

A I don't know of any.

Q Did there come a time when you discussed with various persons certain cash payments to the defendants and others from Progressive?

A Yes.

Q Approximately when was the first of these discussions?

A January-February of '66.

Q Where did that particular discussion take place?

A At the company's office in the Bronx.

Q Who was present?

A Sam Goldman, Martin Goldman, Larry Press and myself.

Q Do you recall whether the defendant was there or not?

A I don't think he was.

Q What was said in that discussion?

MR. MORY: I object to that, your Honor.

THE COURT: Yes, I am inclined to sustain that objection.

MR. BUSH: Your Honor, this is an area that I submitted a memorandum to you on.

THE COURT: Yes, you did. I have considered that and I do not think that the cases which you cite in that memorandum are apposite to this problem. I really don't. This is not the type of case that was involved in those decisions which you brought to my attention, all of which are familiar ones, by the by. I just think those cases are distinguishable from the charges we have here and the nature of the situation generally.

I will explain this further at some later time to you and defense counsel, but I have thought about what you

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have submitted and I respectfully disagree.

Q As a result of that discussion at that particular meeting did there come a time when certain cash payments were made from the funds of Progressive Drug Company?

A Yes.

Q To whom were these payments made?

A The payments that were made -- that I made, were made to Sam Goldman, Martin Goldman, myself and to Larry Hanger. We made one or two payments to a man named Abie.

Q Who was Abie, to your knowledge?

A I believe he was an employee of Mr. Hanger. I know he was an employee of Mr. Hanger.

Q Beyond the payments that you physically made yourself did you direct a Mr. Goldfinger to make additional payments from the company's cash proceeds?

A To Abie.

Q How much were those particular payments?

A $100 a week.

Q When did those particular payments begin?

A Shortly after the meeting.

Q By way of a date, what date would that be approximately?

A February or March, 1966.

Q How long did those particular cash payments last?

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A I think October sometime.

THE COURT: Of what year?

THE WITNESS: '66. Maybe later, I am not too clear, your Honor.

Q After the cash payments stopped what if anything replaced them?

A We paid the money by check to each of the people.

Q When you say to each of the people, to what people would these be?

A Sam Goldman, Martin Goldman -- I know Larry Rosen, I think.

MR. HOFF: Could we ask the witness to keep his voice up.

A I think it was Larry Rosen. Would you refresh my recollection on it?

Q I show you a set of documents that have been marked for identification collectively as Government's Exhibit 14 and I ask you if you can identify those particular documents?

A Yes.

Q What are they?

A They are the checks I just referred to which replaced our former method of paying out the money.

Q How can you identify those as being those particular

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checks?

A I signed the checks.

Q What is the earliest dates on those checks and what is the last date in those particular checks?

A December 2.

Q That is the earliest date?

A And December 15 is the last.

Q Look at the dates again, perhaps.

A December 2, 1966 and December 15, '66. You are right, it.

December 22, '66.

Q I show you another set of documents which have been marked collectively as Government's Exhibits 14A and I ask you if you can identify those particular documents?

A Yes, these are not signed by me but they were issued by the company.

Q What is the earliest date in those particular checks and what is the last date?

A If they are in order, January 13 and February 10, 1967.

MR. BUSH: At this time I would offer Government's Exhibits 14 and 14A into evidence.

MR. HOEY: I have no objection.

(Government's Exhibits 14 and 14A received in

evidence.)

Q Mr. Wainick, I am going to leave those with you for the time being.

To whom are the checks in Government's Exhibits 14 and 14[illegible] made out?

A Larry Rosen.

Q What is the amount of those checks?

A The first three are 200 each. February 10 is $400. Each of the others are for $200 each.

Q With the exception then of the check for February 10 are all of the checks for $200?

A Yes.

Q Does that refresh your recollection as to the amount of money which was given to Abie?

A Yes, $200.

Q For whom was the money which was given to Abie intended?

A As I understand it, the money was intended for Mr. Rosen and Eve Abrams.

MR. BUSH: I have no further questions of this witness.

THE COURT: Mr. Hoey.

CROSS EXAMINATION

BY MR. HOEY:

Q Mr. Wainick, do you maintain an office for the practice of law?

A No, I do not.

Q When was the last time you maintained an office for the practice of law?

A About 1965.

Q Since 1965 you have been engaged in business?

A Yes.

Q How about before 1965?

MR. BUSH: Objection as to relevancy as to the questions going back before 1965.

THE COURT: I quite agree, Mr. Hoey. I don't see any point in that.

If you have something specific in mind that relates to this case, why don't you reframe the question? Even if it means leading a bit.

Q At the present time you say you are with the Richmond Recording, is that correct?

A Yes.

Q How long have you been with them?

A Since March, 1972.

Q Before that with whom were you with?

A I was with Rigid Products Corporation.

Q In 1965 what was your business before you became associated with Bayuse Drug?

A I practiced law. I had some business interests.

Q Had you been associated with Martin Goldman prior to 1965?

A No, but I sold the company which I was an officer of to 20th Century back in 1955 or so.

Q So that you knew the 20th Century people before 1965, is that correct?

A I had met them, yes.

Q And you had business dealings with them?

A That is right, I sold them that company.

Q You sold them an interest in what, Royal Crown Cola Company in New Jersey?

MR. BUSH: Objection as to the relevancy of the sale in 1955.

THE COURT: I must say I quite agree again.

MR. HOFY: On direct examination he has Mr. Posen bringing him to 20th Century. I want to show he had a relationship with 20th Century antedating the Pawnee situation.

THE COURT: Well, I missed that. But if that is the point why don't you rephrase it and we will see what happens.

It seems to me the simple question is if you really want to put it is whether or not he had any business

dealings or connections with this concern called 20th Century prior to --

MR. HOFF: We just admitted that and that is where I am going.

THE COURT: I apologize. Is that what you said you did?

THE WITNESS: Yes, back in 1955 I was instrumental in selling a company I was connected with called Royal Crown Cola Bottling Company of Newark, New Jersey to 20th Century Industries at that time.

THE COURT: Did the Goldmans have anything to do with 20th Century at that time, if you know?

THE WITNESS: Yes.

THE COURT: They did?

THE WITNESS: Yes, they were head of the company. At least the father was. I never met the son before.

THE COURT: All right.

wc 1 Hainick - cross

Q In 1965 you say you became aware of Progressive Drug, is that correct?

A Yes.

Q You became aware of the fact that Progressive Drug was for sale?

A Yes.

Q That it had been sustaining financial losses, is that correct?

A Yes.

Q And you endeavored to purchase that company, is that correct?

A Yes.

Q And with whom?

A Larry Press.

Q Lawrence Press?

A Yes.

Q And you had been in business with Mr. Press prior to that?

A Well, we were both connected with a music company before that.

Q You had not been, neither one of you had been, in the drug business before.

A No.

Q Is that correct?

A Yes.

Q When was Pawnee Drug founded?

A In 1965.

Q Was that created for the purpose of purchasing the stock in Progressive Drug?

A Yes.

Q Did you have the money at that time to do it?

A No.

Q And you borrowed the money from somebody else?

A Yes.

Q Did there come a time eventually when you contacted Mr. Rosen to see if he could secure somebody to put up the rest of the money to complete the deal?

A Yes.

Q Did he then contact these people that you had known before, the Goldmans?

A First contacted other people and the deal couldn't have gone through --

Q And then he contacted Twentieth Century?

A Then he told me he was going to contact Twentieth Century.

Q And you knew these people?

A I knew the people, but he knew them better.

Q Eventually the deal was put through whereby

Twentieth Century purchased all the stock in Pawnee, is that correct?

A That's right.

Q Who were the officers of Pawnee?

A Mr. Press and myself, I believe Mr. Rosen but I am not sure.

Q Was he an officer or director if you remember?

A I don't recall.

Q Did there come a time when after Twentieth Century had taken over you were an officer of Progressive Drug?

A No, I don't think so.

Q Were you an officer of Twentieth Century?

A No.

Q What was your function with Progressive Drug?

A I was one of the two managers, co-general managers.

Q And both you and Mr. Press were the co-general managers?

A That's right.

Q Was there somebody else, an officer of the company, the functional head, I mean the ostensible head as president of the company?

A Martin Goldman.

Q Was president, is that correct?

A I think so.

Q You were an employee, is that correct?

A Yes.

Q And you drew a salary?

A Yes.

Q Did Mr. Press?

A Yes.

Q In addition to that, you say that you and Mr. Press and others, including Martin Goldman and Sam Goldman and, as you say, Mr. Rosen and -- was there anybody else who received this sum of $100 a week for expenses?

A By check?

Q By cash.

A I never said Mr. Rosen received it. I gave it to Abie.

Q You don't know whether Mr. Rosen ever got the moneys or not, is that so?

A I don't know.

Q Mr. Hainick, what part of the business did you participate in as the co-manager of Progressive?

A Mostly the financial and accounts receivable, payable, customers, accounts.

Q What did Mr. Press?

A Sales, discount operations.

Q Did there come any time when you met with Mr.

Rosen to discuss any of the financial problems?

A Yes.

Q Other than meeting him in the plant, did you have any meetings with him outside?

A I don't recall, but I seem to remember that we had a number of dinners together.

Q Dinners together.

A Yes.

Q On those occasions did Mr. Rosen pay the check?

A I don't remember. I didn't pay.

Q You didn't pay. Was there any discussion within Progressive Drug about the securing additional lines for distribution to the various drug stores?

A I don't recall it.

Q Specifically was there any discussion within there in which you may have participated concerning getting in Doctor Denton, you know, the baby clothing, night clothing or anything?

A Oh, yes.

Q Did Mr. Rosen participate in that?

A Yes.

Q Did Mr. Rosen report to you as one of the co-managers of the efforts that he was making to secure the Doctor Denton people as people that would supply you so you

could distribute to the various stores?

A I don't remember this thing clearly, but there was some talk.

Q How about the situation of securing a line of candy for distribution to various retail establishments?

A I don't recall that at all.

Q You don't recall that at all. Did you ever meet a man by the name of Monroe Cohen?

A I don't remember the name.

Q A candy distributor from Plainview, Long Island?

A I don't remember the name.

Q And you have no recollection of that.

A None at all.

Q Do you remember the occasions on one or two times where you had given an envelope to this man Abie from Mr. Hanger?

A I am not sure. I think I gave it to him, but I am not too sure.

Q Do you know what was in the envelope you gave him?

A Money.

Q Do you know how much money?

A It would be $200.

Q Do you know what Abie did with the money?

wc 7 Hainick - cross

A No, I don't.

Q Do you know whether or not it went to Mr. Hanger for reimbursement of expenses incurred by Mr. Rosen on behalf of Progressive Drug?

A I don't know.

Q You don't know what happened.

A No.

Q Did you ever go to Chicago, Illinois, with Mr. Rosen on behalf of Progressive Drug?

A I don't recall.

Q Did you ever go there to see the Pritchards?

A I didn't hear the question, sir.

Q Do you know anybody by the name of Pritchard in Chicago?

A Pritzger?

Q Pritzger.

A Yes.

Q Did you go to Chicago with Mr. Rosen on behalf of Progressive Drug?

A I don't remember.

Q Do you know whether or not Mr. Rosen went to Chicago --

A I don't know.

Q -- on behalf of Progressive Drug?

A No.

MR. HOEY: Your Honor, may I have just a moment to confer with my co-counsel on this.

THE COURT: Yes.

(Pause)

Q Mr. Hainick, during the time you were there and the time that Twentieth Century was still in management or control of Progressive Drug, did there come a time when there was additional financing needed in Progressive Drug?

A Yes.

Q Do you know a man by the name of Cappy? Did you have a friend by the name of Cappy?

A I don't remember the name.

Q Do you know whether or not a man by the name of Cappy and Mr. Rosen went to Chicago to meet a firm out in the Squibb Building there, to secure additional financing?

A I don't remember.

Q Could I refresh your recollection as to the fact that the man's name might be Cappy Rosenblum?

A No.

Q You don't recall that.

A Not now. I don't remember it now.

MR. HOEY: I have no further questions.

THE COURT: Any redirect, Mr. Bush?

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MR. BUSH: Yes, I have some.

REDIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Hainick, these cash payments that were given to Abie, were these drawn up to compensate Abie or any other person for travel and entertainment expenses?

A Not to my knowledge.

Q These checks that are in front of you, Mr. Hainick, that were made out to the order of Mr. Rosen, were these drawn up to compensate Mr. Rosen for travel or entertainment expenses?

A They could be said to be that, yes.

Q Excuse me?

A I suppose they were.

Q What expenses would those have been, Mr. Hainick?

A I don't know.

Q Excuse me?

A I do not know.

Q Did you ever see any substantiation for those particular expenses?

A I don't recall seeing them, no.

Q To your knowledge was any substantiation of any form ever supplied to Progressive Drug Company for those particular expenses?

A I don't remember any of them. I don't think they were submitted.

Q Turning your attention to the Doctor Denton product lines, when if you recall did you discuss this with the defendant?

A I don't know. I don't recall.

Q Do you recall ever discussing it with him?

A Oh, yes.

Q Over what period of time did these discussions occur; do you recall that?

A I can't tell. The deal aborted, it never really got off the ground, so I don't remember.

Q Did the discussions last a week, two weeks, a month?

A I would say three or four weeks.

Q Do you recall the defendant attempting to bring any product line beyond this Doctor Denton into the company?

A No.

Q During your direct testimony you mentioned the name Pritzger, I believe it is?

A Pritzger, P-r-i-t-z-g-e-r. I think that is the way he spells his name.

Q What is that gentleman's first name?

A I don't know.

Q What does he do, or what did he do back in 1966?

A He acquires and sells companies by the dozen.

Q Did he have any products that might be held or which might have been sold by Progressive Drug Company?

A I don't know about products. He might have sold companies, had companies for sale. He usually did.

Q What if any discussion would have occurred between Mr. Rosen and him, to your knowledge, concerning Progressive?

A I have no recollection of that at all.

MR. BUSH: I have no further questions.

THE COURT: Thank you, Mr. Hainick. You may be excused.

(Witness excused)

MR. BUSH: The Government would call as its next witness a Benjamin Malbe.

B E N J A M I N M A L B E, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUSH:

Q By whom are you employed, Mr. Malbe?

A The Bureau of Supplies, Board of Education.

THE COURT: I am sorry, Mr. Malbe, I could not hear that, and I suspect --

THE WITNESS: The Bureau of Supplies of the Board of Education.

THE COURT: The Bureau of Supplies?

THE WITNESS: Of the Board of Education.

THE COURT: Of the City of New York?

THE WITNESS: City of New York.

THE COURT: Thank you.

Q Mr. Malbe, you are going to have to speak up so that all of the jurors and everybody else in the courtroom as well can hear you.

A I will.

Q Was there a time when you worked for a firm known as the Progressive Drug Company?

A Yes.

Q Roughly when did you begin to work for that firm?

A I believe in 1931.

Q How long did you work there?

A Thirty-seven years.

Q Beginning with your earliest position or positions, what role did you play in that firm?

A The position I started in?

Q The position you started with, right.

A I was a pricer, commonly known as a billing clerk.

Q Following that, what position or positions did you hold?

A Then I became a buyer.

Q And after that?

A A sales manager.

Q When did you become sales manager?

A Oh, it could be, I don't recall, maybe eight, nine years later.

Q By way of a date, roughly when would that have been?

A 1938 or 1939, somewheres around there.

Q How long did you remain the sales manager of Progressive?

A All the time up until the time they went out of business.

Q Was there a period when you were named as president of the company?

A Yes. When the new people took it over, Mr. Hainick and Mr. Press.

Q Roughly when was that?

A 1965, I believe, the firm was purchased.

Q Who owned the firm before that date?

A Beg your pardon?

Q Who owned Progressive prior to the time Hainick

and Press took it over?

A Well, Mr. Samuel Steckler.

Q During the time you were president what was your function in the company?

A I was general sales manager and also did a lot of buying and oversaw buying of two other buyers.

Q Would you describe first what the sales manager for Progressive did during 1966, or acting in that capacity?

A I oversaw the sales of the salesmen; you had charge of all the salesmen, you had charge of all their, what we call commonly, PM's, their promotional moneys, and they also did a lot of buying with that with the larger companies that we did business with.

Q What did your role as supervising this buying encompass during 1966?

A I don't know if I follow the question.

Q In your role as buyer or supervisor of buyers, what did you do?

A Well, we had two other buyers, which they bought regular merchandise. If there was any question of whether they had to buy deals and so on, they had to have my permission as to the amount of deals they could purchase.

Q Whom did you contact in your role as a buyer, what type of firms?

A Oh, they could range anywhere from all of them, Bristol-Myers, Pfizer, all the companies that we did a volume of business with, Richardson-Merrell, Parke-Davis, Warner-Lambert. You could go on to practically all of them. The regular buyers, when it came to just buying regular merchandise, they didn't need my permission. But if some company would come in with some deal or other, you know, they would say, "Should we buy fifty, a hundred, 150," or what we think we could sell, our salesmen could sell, and it was my function to OK that.

Q Who were the regular buyers?

A Their names?

Q Their names.

A One was Nat Schwartz and the other one was Joseph Klugerman.

Q Do you know who a Larry Rosen is?

A No, I do not.

Q Did you ever see him at Progressive?

A I saw him, but I've never spoken to him or had any conversations with him.

Q Is the man that you saw on the premises of Progressive Drug Company in this courtroom here today?

A I don't know.

Q Was there a time when you knew of a man called

Larry Rosen being on the premises of Progressive?

A Oh, yes, I knew of a man being called Larry Rosen just by knowledge, by asking somebody who he is and he said, "Well, he's Larry Rosen."

Q What if anything, to your knowledge, did he do in the area of buying for Progressive?

A Nothing whatsoever, to my knowledge. I have no knowledge of him doing any buying whatsoever.

Q During 1966 and 1967, to your knowledge, was any buying for the firm of Progressive done in areas which you would not know about?

A It could have been. Mr. Press or Mr. Hainick could have bought merchandise which I knew nothing about. They didn't ask my permission or even tell me about it, but they could have.

Q To your knowledge, were any new product lines added to the company during 1966 or 1967?

A Well, it all depends what you mean by new product lines. If Bristol-Myers came out with a new item, our buyers would take care of that.

Q Did Progressive begin doing business with manufacturers with whom it had not done business prior to 1966?

A That is a hard question to answer, because so many

new items come on the drug market that a new manufacturer could have come out with an item.

Q More specifically, to your knowledge did Progressive have any contact with or do any buying from an outfit known as Doctor Denton?

A Not to my knowledge, sir. I never heard of them.

Q To your knowledge, did Progressive ever do any business with or have any contact with a candy distributor in Plainview, Long Island, by the name of Monroe Cohen?

A Never heard of him.

Q What if anything did this gentleman known to you as Larry Rosen do in behalf of or in the area of selling of Progressive during 1966 and 1967?

A Nothing that I am aware of. Absolutely nothing that I am aware of.

Q To your knowledge, what if any expenses did he have or incur while working on behalf of Progressive Drug?

A Nothing that I am aware of.

MR. BUSH: I have no further questions of this witness.

THE COURT: Mr. Hoey.

CROSS EXAMINATION

BY MR. HOEY:

Q Mr. Malbe, you say you were made president of

Progressive Drug in 1966?

A Well, it's either '65 or '66. I don't recall the exact date. I was made president when Mr. Hainick and Mr. Press took over the business.

Q That is right. To whom did you report as the president of Progressive Drug?

A Nobody.

Q Nobody?

A No.

Q You made all the decisions of Progressive Drug?

A Well, the decisions as far as buying was concerned. Nothing else.

Q Did you have charge of the buying of the sundry items?

A Some of them, not all of them.

Q Not all of them.

A Not all.

Q Was there any expansion of the items, sundry items, by Progressive Drug buying during the year 1966?

A Well, when you use the word "expansion," it doesn't mean anything. A new sundry item may have come out at that time and we may have purchased it.

Q You don't have any independent recollection of any expansion of items being purchased?

A No, not an expansion, to use that word, no.

Q Do you know of any new product lines that were purchased or taken on by Progressive Drug during 1966?

A Not to my knowledge.

Q Were you privy to any meetings considering the adoption of any new product lines during 1966?

A While Mr. Hainick and Mr. Press were --

Q Yes.

A No.

Q Do you know whether or not there was a search on by either Hainick, Press, or anybody else for additional lines to be taken over by Progressive Drug during 1966?

A There may have been, but not to my knowledge.

Q Not to your knowledge.

A No.

Q You don't know anything about it?

A They didn't ask my advice.

MR. HOEY: I have no further questions.

THE COURT: Anything further, Mr. Bush?

MR. BUSH: One or two further questions, your Honor.

REDIRECT EXAMINATION

BY MR. BUSH:

Q As far as sundry items go, Mr. Malbe, who did the

buying of those items at Progressive during 1966 and 1967?

A Well, I did some and Mr. Klugerman also did some of it.

Q Would it be fair to state that either you did the purchasing of those items or individuals under your supervision?

A Either I did it or buyers under my supervision?

MR. BUSH: Your Honor, I am not sure, given the shuffling of the papers, that we heard the last response. Could I ask the reporter to read it back.

THE COURT: Yes.

(Question and answer read)

Q Would you complete your answer.

A Did it.

MR. BUSH: No further questions.

RECROSS EXAMINATION

BY MR. HOEY:

Q By the way, do you know whether either Mr. Press or Mr. Hainick had anything to do with the expansion of the lines of Progressive Drug during the period they were there in 1966?

A If they did, sir, it was without my knowledge.

Q Do you know whether or not they started to implement any of their discussions that they had then to

take on additional lines during 1966?

A I do not. They never asked my opinion about it or advice.

MR. HOEY: Fine.

THE COURT: Thank you, Mr. Malbe. You may be excused, sir.

(Witness excused)

MR. BUSH: The Government calls as its next witness Benjamin Goldfinger.

BENJAMIN GOLDFINGER, called as a witness in behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSE:

Q Mr. Goldfinger, I am going to ask you to speak up as loudly and as clearly as you can so we can all hear you.

How old are you, sir?

A 71.

Q Was there a time when you were employed by a firm known as the Progressive Drug Company?

A Yes.

Q When were you first so employed?

A Oh, I was with the firm about 40 years.

Q When did you begin working for Progressive?

A Roughly about 1930.

Q What position or positions did you hold initially with the company?

A Originally bookkeeper and then credit manager and then controller and vice-president.

Q When did you first become the controller of the of the company?

A Approximately 1963.

Q How long did you remain controller of the company?

A Until 1968 at which time I resigned to retire.

Q When did you become a vice-president of the company?

A I became vice-president about 1964 and resigned as vice-president December of 1965. I again became vice-president approximately October of '67 until my retirement in 1968.

Q In the early 1960's by whom was Progressive owned?

A Progressive was a corporation and it had two stockholders, Samuel P. Steckler and his wife, Stella Steckler.

Q Did there come a time when the company was sold to an outfit known as Paunee Drug Company?

A Yes.

Q Roughly when was that?

A That was December, 1965.

Q Following that sale, I take it from what you said before you remained as controller?

A Yes. At that time I resigned as vice-president but remained as controller.

Q Throughout the time the company was owned by Paunee were you the controller of it?

A Yes.

Q Who is Henry Wainick?

A Henry Wainick was running Progressive Drug Company.

He was the chief executive officer. He became chief executive officer when Bayuse took ownership in December of 1965.

Q How long did he remain with Progressive? Roughly that is.

A He remained with Progressive until December of 1967.

Q Did there come a time when Henry Wainick or some other individual associated with Progressive asked you to place money in envelopes so that it could be distributed?

A Yes.

Q Approximately when did this occur?

A The early part of 1966, approximately February.

Q Roughly how long did you continue with this practice?

A Until the latter part of 1966, approximately October of '66.

Q Where did the cash come from which was placed into these envelopes?

A From cash receipts for COD collections or cash sales.

Q After you had placed the cash in the envelopes to whom did you give the envelopes?

A Usually to Mr. Wainick.

Q Was there any other individual or individuals to whom you gave them?

A On occasions to Mr. Press and on two or three occasions to a messenger, a messenger from Mr. Manger, I presume, known as Abie.

Q Did you keep a record of the amounts distributed in this fashion?

A I did.

Q Incidentally, prior to these cash distributions about which we have been talking in the entire time you were at Progressive had such cash distributions ever been made before?

A No.

Q I show you a document which has been marked for identification as Government's Exhibit 15 and I ask you if you can identify that particular document?

A Yes. I prepared that.

Q What is that?

A That is a list of the cash along with the dates and the amounts that was inserted in an envelope and generally turned over to Mr. Mainick.

Q Was this the cash about which we have just been talking?

A Yes.

Q What is the first date for such a distribution?

A February 4, 1966.

Q When did the regular distribution of this nature or this type stop?

A December 22, 1966.

Q When prior to December 22, 1966 was the last previous distribution?

A November 21.

MR. BUSH: At this time I would offer Government's Exhibit 15 into evidence.

MR. HOFY: May I just ask one question on this?

VOIR DIRE EXAMINATION

BY MR. HOFY:

Q This apparently comes from a looseleaf book, is that correct?

A That is correct.

Q It is not a bound book but a looseleaf book?

A Yes.

MR. BUSH: Objection as to any further questions along this line as improper voir dire.

THE COURT: I can't be certain that is so.

Q Where is the original of this? This is only a photocopy.

A It would be with the books of the company.

Q With the books of the company?

A Yes.

Q And you haven't seen it recently?

A I had --

Q The original books or papers from which this was made.

A The last time I saw it --

Q It was how long ago timewise?

A 1968.

Q And this is an accurate representation?

A That is my writing, exactly.

MR. HOEY: I have no objection.

(Government Exhibit 15 received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. BUSH:

Q Mr. Goldfinger, I am going to leave Government's Exhibit 15 with you for the time being.

I want you to glance at Government's Exhibit 15 and tell me approximately how regular these cash payments were?

MR. HOEY: I object to that, the exhibit speaks for itself.

THE COURT: I would be inclined to agree, particularly at this point, Mr. Bush. We have had the testimony

of a number of people on this. You can circulate this to the jury, if you wish.

MR. BUSH: I will at the time we finish the direct.

THE COURT: Fair enough.

Q Other than this document was there any record made of the disbursements of this cash?

A No.

Q How was the disbursement of this money ultimately treated on the books of Progressive?

A The accountant prepared an entry charging it off to travelling and entertainment expenses.

Q When was this entry so prepared?

A The latter part of 1966.

Q Incidentally, what is the total sum of money so distributed?

A $18,175.

Q Did there come a time when these particular cash payments were converted into payment by check?

A Yes.

Q Roughly when did this occur?

A I believe in January of '67 or December of '66.

Q I show you a document which has been introduced into evidence as Government's Exhibit 14 and similarly a second document which has been introduced into evidence

as Government Exhibit 14A, and I ask you if you can identify the items appearing in those two exhibits?

A Yes.

Q What are they?

A These are checks that were prepared, December 2, 1966 to roughly February of 1967.

Q How can you identify those particular documents?

A My signature appears on the checks.

Q What if any documents did Progressive have to substantiate the expenditures of these cash payments as travel and entertainment expenses?

A None.

Q To your knowledge, were any documents ever submitted to the corporation to so substantiate these expenditures?

A No, not to my knowledge.

Q Turning your attention to the payments by check, what if any documents did the company have to substantiate these expenditures as travel and entertainment expenses?

A None.

Q To your knowledge, were documents of this nature ever submitted to the company?

A Not to my knowledge.

Q Who would have received such documents if they had

been submitted during 1966 or 1967 or the period of time you were there in 1963?

A I would have.

MR. BUSH: With leave of the Court, I would like to have the jury look at the checks and the notebook, if I might, starting with the notebook with juror number one and the checks with juror number seven.

THE COURT: All right.

MR. BUSH: I have no further questions of Mr. Goldfinger.

(Pause.)

MR. BUSH: It slipped my attention but I would request permission to open my direct just for a moment.

THE COURT: All right.

MR. BUSH: Would you like me to do that now while the jury is examining these documents?

THE COURT: I would suggest that we ought to let the jury see these papers without interruption.

(Pause.)

FURTHER DIRECT EXAMINATION

BY MR. BUSH:

Q Mr. Goldfinger, did there come a time when you met a man known as Larry Rosen?

A Well, I've known of Mr. Rosen. I don't think I was ever introduced to him, but I knew him.

Q Is he here in this courtroom today?

A Yes.

Q Would you point him out to the members of the jury?

MR. HOEY: Identification conceded.

Q What if anything did he do in behalf of Progressive Drug Company during 1966 and 1967?

A To my knowledge, I don't know.

Q To your knowledge, did he incur any expenses in relationship to doing anything in behalf of Progressive Drug Company?

A Not as far as I know.

Q Have you ever heard of a Cappy Rosenblum?

A No.

Q To your knowledge, did the defendant participate in any way in attempting to arrange financing from a Chicago financial institution for Progressive Drug Company?

A Not to my knowledge.

Q Have you ever heard of a Mr. Pritzger? I believe it is spelled P-r-i-t-z-g-e-r.

A No.

Q To your knowledge, did the defendant ever contact such a person on behalf of Progressive Drug Company?

A Not to my knowledge.

Q I show you Government's Exhibit 14A, and I note that all of the checks there appear to be in the amount of $200, with the exception of the check dated February 10, which is in the amount of $400. Do you know the reason for the change in dollar amount?

A I don't know the reason for it, but there's a possibility that this last one is dated two weeks beyond the previous one, so it may be double payment.

MR. BUSH: Thank you. No further questions.

CROSS-EXAMINATION

BY MR. HOLY:

Q Mr. Goldfinger, from whom did you take your instructions to have the checks drawn which are Government's Exhibit 14 and 14A?

A Henry Hainick.

Q He was the man that was in charge of the administration of the office, is that correct?

A That's correct.

Q He was in charge of the financial arrangements?

A He was the chief executive officer, yes.

Q And you were just following instructions from him?

A That's correct.

Q No matter what he told you to do in regard to the business, you would carry out what he said; is that correct?

A That's correct.

Q What function did Mr. Malbe have after Mr. Press and Mr. Hainick came in?

A He was president and sales manager.

Q Did he have any real function in regard to the financial operation of the company?

A No.

Q He was just actually given the title of president and acted as sales manager.

A That's correct.

Q Is that correct?

A That's correct.

Q His functions had not changed from the time prior to the taking over of Progressive by Pawnee Drug; is that correct?

A Well, at the time Pawnee took it over he became president. Prior to that he was vice-president.

Q Vice-president and sales manager?

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A And sales manager.

Q He still maintained his function as sales manager, is that correct?

A That's correct.

Q But Mr. Hainick was the chief executive officer and ran the administration, is that correct?

A Mr. Hainick or Mr. Press made decisions, made all decisions.

Q They were the one who made the actual decisions, isn't that correct?

A That's correct.

Q You say that there was cash income received by Progressive Drug; is that correct?

A That's correct.

Q That would be from what, COD orders?

A From COD orders and cash sales.

Q Cash sales of people --

A On the premises.

Q On the premises. Was that declared as income by Progressive?

A Yes.

Q That was recorded regularly in the books, is that correct?

A That's correct.

Q So that whatever travel and entertainment was against this cash income that came, that came into the company; is that correct?

A I don't quite understand that question.

Q What was the amount of business of Progressive, say, during the year 1966?

A Approximately nine or ten million.

Q $10,000,000. And out of the cash that came in, what percentage, what would be the percentage of the nine or ten million dollars that came in in cash?

A I don't recall. It would be a small percentage.

Q A small percentage. About 10 percent or less?

A Possibly, yes.

Q And the rest was billed out and paid for by check?

A Either billed out or paid for by check.

Q About 1 percent, would that be more accurate, than 10 percent, of cash?

A I don't recall the figures. The books would indicate that. I don't know.

Q But all the income that came in was recorded, is that correct?

A It was all recorded.

Q There was no diversion of the cash per se to any

of these people that were getting these expenses; is that correct?

MR. BUSH: Objection as to the form of the question.

THE COURT: Yes, sustained as to form.

Q All the income came in and was recorded on the books, is that right?

A That's correct.

Q And there was no diversion of the income that came in in cash to any persons; is that correct?

MR. BUSH: Same objection.

THE COURT: Same ruling. Rephrase it, please.

Q Did any of the money that came in in cash be not recorded on the books and diverted to Mr.Rosen?

MR. BUSH: Same objection; also asked and answered.

THE COURT: I quite agree. The pertinent part of your question, as I understand it, has been asked and answered twice already, and the rest is improper.

Q You say that early in 1966 you were told to place money in envelopes, is that correct?

A That's correct.

Q By whom?

A Henry Hainick.

Q How much did he direct you to place in envelopes?

A Well, it would be placed in there on each occasion, the amount he specified.

Q Would he give you directions on each and every week to place money in that envelope?

A That is correct.

Q Was it the same amount each week?

A No.

Q Did you ever give an envelope containing money to Mr. Rosen?

A No.

Q I believe you testified on direct examination that on two occasions you gave envelopes to Mr. Abe, a messenger from Mr. Manger?

A That's correct.

Q Do you remember when those were, Mr. Goldfinger?

A I think one or two of them are indicated on that slip.

MR. HOEY: May I see the exhibit. What is it, 15, please?

THE WITNESS: Toward the end of it.

Q There is one notation there of 10/18. Is that in your handwriting?

A That is in my handwriting.

Q And Abe, is that correct?

A Yes.

Q And another one, November 28, Abe.

A Yes.

Q Is that correct?

A Yes.

Q They are both in your handwriting?

A Yes. Let me correct that. I may not have given it to Abe directly. I was asked by Hainick to prepare any envelope, and a messenger, Abe, would call for it. Now, whether I gave it directly to Abe or to Hainick and Abe, I don't --

Q You don't know whether you directly gave it?

A That's right.

Q Then on all other occasions you gave it to Mr. Hainick, is that correct?

A Mr. Hainick and on possibly a few occasions to Lawrence Press.

Q That would be on how many occasions in all did you give it to Mr. Press?

A Very few.

Q Most of the time it was Mr. Hainick, is that correct?

A That's correct.

Q You don't know what Mr. Hainick did with the envelopes, do you?

A I have no idea, except what he told me he did with them.

Q Yes, but you have no independent knowledge of what he did with the envelopes containing the cash?

A No, except what he told me.

Q Mr. Goldfinger, from your own knowledge do you have any knowledge whether or not -- withdrawn -- do you have any independent knowledge that the funds which are set forth in Government's Exhibit 15 were in fact not expended for travel and expense?

MR. BUSH: Objection as to form. I am not sure I understand the question.

THE COURT: I must confess I don't understand it either, Mr. Hoey.

MR. HOEY: I will withdraw it and I will rephrase it.

Q Mr. Goldfinger, do you have any personal knowledge that the funds which youplaced in the envelopes and gave to Mr. Hainick were in fact not used for travel and expense?

A I have no knowledge of that.

Q By the way, Mr. Goldfinger, were there in fact

funds expended for travel and expense on behalf of Progressive Drug during the year 1966?

A Yes.

Q Did you receive vouchers for each and every expenditure for travel and expense for the year 1966?

A I believe most of them were. I wouldn't say all of them.

Q But not for all of them, is that correct?

A Yes.

Q Mr. Goldfinger, as controller of the company, did you prepare Form 1099 of the Internal Revenue?

A It was prepared, yes.

Q Did you submit them to the various perons who had received expense money during the year 1966?

A I don't recall.

Q Did you prepare and send one to Mr. Rosen for having received any moneys during the year 1966?

A No.

Q Do you in fact know whether or not Mr. Rosen received any moneys for travel and expense or any moneys for the year 1966 from Progressive Drug?

MR. BUSH: Asked and answered, I believe, your Honor.

THE COURT: That is what I would think too, Mr.

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MR. HOEY: I have no further questions.

MR. BUSH: I have a few, your Honor.

REDIRECT EXAMINATION

BY MR. BUSH:

Q During the time you saw Mr. Rosen in 1966 and 1967, do you know where he worked?

MR. HOEY: I object to this, your Honor, as improper redirect.

THE COURT: I quite agree. I should think you could have gone into this before.

MR. BUSH: Your Honor, I think he was questioned and repeatedly questioned on his cross whether in fact he knew whether Mr. Rosen received the money. My redirect in this particular area is directed toward that part of the cross-examination.

THE COURT: I don't share your view. I am sorry, I did not understand the cross-examination to be quite that way. In any event, this is such an obvious point that I see no reason to raise it at this late time.

MR. BUSH: I have one or two additional questions in this area.

THE COURT: Go ahead. Let us hear whatever else you have.

Q To your knowledge, during 1966 and 1967, did anyone other than Mr. Rosen from Mr. Manger have any connection with Progressive Drug Company?

MR. MOTT: I object to that, your Honor, as improper redirect.

THE COURT: I quite agree.

Also there is put into your question something which is nothing but your first question.

Q You stated on direct that there were travel and entertainment expenses as part of the business of Progressive Drug Company?

A That is correct.

Q Roughly what percentage, apart from this sum of $10,000 in cash that we are talking about or were talking about, roughly what percentage of those travel and entertainment expenses were substantiated by receipts in one form or another?

A I wouldn't know what percentage.

Q Do you have an approximation?

A It is difficult.

Q Was it over half?

A Over half of what?

Q Over half of those expenditures of that nature?

A They were travel and entertaining expenses made

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to three different individuals.

Q Excuse me?

A Travel and entertainment expenses made for three individuals.

Q Who were they?

A Benjamin Malbe who was president at the time, Lawrence Brass and Henry Wainick. Other than that --

Q Was any part of this 18,000 and some dollars treated on the records until the end of 1966 as travel and entertainment?

A At the end of '66. No part of it prior to that.

Q Was any part of it substantiated in any way by a receipt?

A No. Do you want to clarify that question? Which part are you talking about now?

Q The $18,000 in cash. Was any part of that ever supported in any way by a receipt?

A No.

MR. BUSH: No further questions.

THE COURT: Thank you, Mr. Goldfinger, you may be excused.

(Witness excused.)

THE COURT: I think at this point we will take the morning recess, ladies and gentlemen of the jury, ten minutes

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AFTERNOON SESSION

2:00 p.m.

(in open court.)

MR. MUSOFF: If your Honor please, the defendant is ready to proceed.

THE COURT: All right.

MR. MUSOFF: We would like to call Mr. Karl Grossman to the stand.

K A R L G R O S S M A N, a witness called by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSOFF:

Q Mr. Grossman, by whom are you employed?

A Commercial Trading Company, Inc.

Q What position do you hold in that company?

A President.

Q What does that company do?

A Commercial financing.

Q What is the approximate total yearly volume of business that your company engages in?

A For the year ended January 31, '73, approximately 330 million dollars.

Q Do you know Mr. Lawrence Rosen?

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A Yes, sir.

Q How long have you known him?

A 10, 12 years.

Q During that period of time have you had any business relationships with him?

A Yes, sir.

Q Can you please describe those relationships?

MR. BUSH: Objection except as to how they pertain to this case.

I will withdraw the objection.

THE COURT: What Government counsel is really saying is, "I hope you don't mean to extend the discussion of every business deal."

MR. MUSOFF: No, your Honor, I don't. This is just to set a context.

THE COURT: All right, on that basis, fine.

Q Can you please describe briefly those relationships, the business relationships you have had with Mr. Rosen?

A Over the years Mr. Rosen has introduced us to a number of firms needing commercial financing both as a friend or as a principle.

Q Can you give us the names of some of the companies that you financed in that manner through Mr. Rosen?

A Mr. Manger, Progressive Drug, Air Equipped.

Q Can you give us the approximate amount of loans that were involved?

A Revolving?

Q Yes.

A Perhaps 100 million dollars.

Q Were those loans secured loans?

A Yes, sir.

Q Did you concern yourself at any time with the amount of salary or other payments that Mr. Rosen may have received from any of those companies that you mentioned as a condition to making loans?

A No, sir.

Q What has been your personal experience insofar as Mr. Rosen's honesty is concerned?

MR. BUSH: Objection as to that.

THE COURT: Yes. He can give opinion evidence of the subject but that is not the customary form under the present rule. Put differently, there is another way of putting this, Mr. Musoff, if the witness is prepared to be able to answer it.

Q How would you describe your personal and business relationship with Mr. Rosen?

MR. BUSH: Same objection, your Honor.

THE COURT: Same ruling.

I assume, in other words, Mr. Musoff, you wish to offer character evidence through this witness, is that correct?

MR. MUSOFF: Yes, your Honor, but what I would like to explicitly get before the jury is his personal relationship, not a general reputation. I think that is permissible.

THE COURT: The law, as I understand it, still permits character evidence and that character evidence is reputation within the community with which the witness is familiar having to do with the person in question.

MR. MUSOFF: I will reframe my question then, your Honor.

Q Are you familiar with the general reputation of Mr. Rosen in the community?

A I really don't know how to answer that.

Q Using the term community to mean the community of people that you have come in contact with as a result of your meetings and familiarity with Mr. Rosen --

MR. BUSH: Objection again as to form.

THE COURT: I am sorry, I didn't catch that, Mr. Musoff.

(Record read.)

THE COURT: I am inclined to agree that you ought

to rephrase that. There is a rather subtle way of doing this, I am sorry to say, Mr. Musoff.

Let me help you out. Have you ever had occasion, sir, to discuss Mr. Rosen's reputation for truth and veracity with other persons?

THE WITNESS: Yes, sir.

THE COURT: Generally speaking, are these people who are sociable acquaintances of yours or his or are they business acquaintances?

THE WITNESS: Generally b usiness.

THE COURT: Take it from there, Mr. Musoff.

MR. MUSOFF: Thank you, your Honor.

Q What did you determine with regard to Mr. Rosen's reputation for truth and veracity?

A Very good.

Q Directing your attention to the financing of Progressive Drug by your company, Commercial Trading, when did that take place?

A Originally in 1966.

Q In connection with that financing did you have any meetings and conferences with Mr. Rosen?

A Yes, sir.

Q Over what period of time did they take place?

A From the time the deal first was brought to us by Mr. Rosen, which would be about two months prior to our

going into the deal, until we were paid out of the deal, a year later. I guess it would be a period of about two years.

Q 1966 and 1967?

A That iy correct.

Q How often did those conferences and meetings relating to the financing of Progressive Drug take place?

A Generally once or twice a week.

Q Over this period of time?

A Yes.

Q Where did those meetings and conferences take place?

A Occasionally at our office. Generally I would meet Larry for dinner, a drink perhaps.

Q Can you recall the names of any of the restaurants that you met with Mr. Rosen in and conferred with him in?

A Yes, sir.

Q Would you please tell us those names?

A We would usually meet at Peter Luger's, Chriscella's, Pietro's, and others.

Q Were other people present besides you and Mr. Rosen?

A Occasionally.

Q Can you give us an approximation of how many other people might have been present on those occasions?

A Sometimes the two of us would have dinner alone and sometimes there would be three for dinner and sometimes four.

Q Who generally paid the restaurant bills on those occasions?

A We usually alternated.

Q One time you would pick up the bill and the next time Mr. Rosen would?

A That is correct.

Q When Mr. Rosen paid Dedoso by credit card or by cash?

A Usually by cash.

Q Did Mr. Rosen appear to be well known in the restaurants that you frequented?

A He was known.

Q Can you estimate the amount of money that Mr. Rosen expended in restaurants during the period 1966 and 1967 that you met and conferred with him?

MR. BUSH: Objection.

THE COURT: I couldn't hear you.

MR. BUSH: I think I may have cut Mr. Musoff off in midstream.

(Question read.)

MR. BUSH: I would object at this time on the

basis that we haven't set anything as to what these meetings concerned. Apparently Mr. Grossman had meetings with Mr. Rosen on any number of different business deals.

MR. MUSOFF: If your Honor please, I believe the testimony of this witness was that those meetings and conferences concerned the financing of Progressive Drug Company.

THE COURT: All right, accepting that, now, Mr. Bush, what is your position?

MR. BUSH: Accepting that I have no objection.

THE COURT: All right.

A Assuming that the dinners ran $15 a person, which is $30 over a year and a half to two year period, it would be about $1,500 or $2,000 -- about $1,500, I would assume, $1,250, $1,500. Then miscellaneous expenses. If we go in the car, Larry would take the parking check for both of us, one time I would pick it up for both of us. I would imagine $1,500, $2,000, $1,700.

MR. MUSOFF: Thank you. No further questions, your Honor.

THE COURT: I am confused, Mr. Grossman. You mentioned something about a period of a year and a year and a half. I thought this was in the year of 1966.

THE WITNESS: '66 and '67, sir.

THE COURT: Can you fix the period of time a little more definitely than that? In other words, how many months overall, 24 months?

THE WITNESS: I would say it was 20 months.

MR. MUSOFF: May I ask one further question in lieu of that line, your Honor?

THE COURT: Certainly.

Q Can you further break down that estimate between the year 1966 and 1967?

A No, it would be impossible. It is just an estimate.

MR. MUSOFF: Thank you.

CROSS EXAMINATION

BY MR. BUSH:

Q Mr. Grossman, you testified that you were familiar with Mr. Rosen's reputation for honesty and veracity in the community in which you were familiar with his actions, was that correct?

A I thought that the question had been "Had you ever discussed Mr. Rosen with business acquaintances and what was his reputation with them."

Q Assuming that was the question, are you familiar with that?

A Because the general community, I could not answer.

Q Within the business community, are you familiar with that?

A Within the business community of people that I know, yes.

Q Of his reputation for truthfulness and veracity, you are familiar with that?

A Yes, sir.

Q You stated you had known Mr. Rosen for ten or 12 years?

A Yes, sir.

Q Thatwould take us back to what -- early 1960's?

A Yes, sir.

Q With what business was Mr. Rosen first associated when you knew him?

A Yankee Plastics.

Q Had you heard, in the mid-1950's, that Mr. Rosen had gone into bankruptcy?

A In the mid-1950's?

Q 1960's, I'm sorry.

A Yes, sir.

Q Had you heard that he had a judgment entered against him for testifying falsely in proceedings supplemental to the collection of a debt?

A No, sir.

Q Had you heard that he was fined $250 for giving false testimony in such supplemental proceedings?

A If I didn't hear -- no, sir.

Q Had you heard that he was ordered simultaneously or in the same order, if you would, to pay judgment creditors some $50 per week?

A No, sir.

Q Turning your attention to 1969 and the first three or four months of that year, had you heard that Mr. Rosen's name was mentioned in connection with investigations by the New York State Commission of Investigation into organized crime infiltrations into legitimate businesses?

A I had heard it, yes, sir.

Q Had you heard that Mr. Rosen had tax problems relating back to the early 1960's in which years he failed to file any tax returns?

A No, sir.

MR. MUSOFF: May we approach the bench, your Honor?

THE COURT: I'm sorry, I don't know quite what to make of this. What is the matter?

MR. MUSOFF: I don't believe that the statements that Mr. Bush is incorporating in his questions are factual.

THE COURT: Gentlemen, I have no facts at my

disposal to be able to answer that. You didn't object so I didn't rule on the matter.

MR. MUSOFF: I object then, your Honor.

THE COURT: It is a little late because we have been going on in this line for the last five minutes.

However, in order to make sure what we are really with, if you like, I would have you and Mr. Bush up here at the side bar.

(At the side bar.)

MR. MUSOFF: The first thing I would like to state, your Honor, is that reputation evidence was limited to the business community and not the general community.

THE COURT: That doesn't make any difference. These are business-type matters, taxes, supplementary proceedings, bankruptcy. It is perfectly relevant in that sense. But you claim none of this is accurate. I can't answer that. I assume Mr. Bush has information.

MR. BUSH: With respect first to the organized crime inquiry, I think what the Court has seen in the way of exhibits substantiates that.

THE COURT: I don't understand counsel to be arguing that. He is talking about --

MR. MUSOFF: Failure to file.

MR. BUSH: I can pull out my notes on that. As

far as the judgment for testifying falsely I have a copy of that present with me. It is a contempt citation. That is the referee's report.

THE COURT: I don't have to look very much further. I am afraid he has a factual basis right there for that line of inquiry. As to the tax matters, I assume the government has --

MR. BUSH: There was a prior investigation for Mr. Rosen. I believe my question was phrased as to the early 1960's without a specific year. I may be off and it may have been '59 as well but I will pull out my file in that matter now, if you wish.

MR. MUSOFF: We should inquire as to the factual basis before he is permitted to ask those questions.

THE COURT: The normal rule in Anglo-Saxon courts is that if the defendant has some reasonable basis to make these inquiries he can do it because it is relevant to ask a person who testifies as to one's reputation whether or not he heard these matters. So I am going to accept this on good faith and if the government has the t a x m a t - t e r s in hand I would have no objection to you asking Mr. Bush to show this material to you at some suitable time here this afternoon.

But I have no reason to doubt counsel anymore than

I would doubt any one of you. You all know that if you have material like this you can cross examine on it if it is relevant. I think this is relevant. Let's go ahead.

(In open court.)

Q Mr. Grossman, had you herad of the indictment in this case for income tax evasion and fraudulent tax returns both for the years 1966 and 1967?

A Yes, sir.

Q Mr. Grossman, you said you were with the outfit of Commercial Trading Corporation, is that correct?

A Company, Inc. Commercial Trading Company, Inc.

Q And that is a factor, is it not?

A Commercial finance.

Q As part of its commercial finance does it provide factoring services for different business?

A No, sir.

Q It does not?

A No, sir.

Q It issues straight business loans?

A Yes, sir.

Q Was it ever in the past provided factoring type of finance for companies?

A I don't know whatyou mean by factoring type finance but what is generally accepted would be a guarantee

of credits which we do not do.

Q What I mean by factoring type finance is issuing finance on the basis that the company in question turns over to your organization its accounts receivable, that would be in the way of security, and you also would act as a direct receiver of payment.

A That is commercial finance. Generally we do not act as the direct receiver of payment. That is not factoring.

Q The company secures its indebtedness to you by accounts receivable and you call it commercial finance?

A That is correct.

Q Was that the type of indebtedness or finance that you provided to Mr. Rosen and his various companies?

A Usually.

Q What company was the first company that you provided any form of commercial finance or in the way that Mr. Rosen was either a principal of or introduced you to?

A Yankee Plastics.

Q What was his position at Yankee Plastics?

A He was an officer, I believe. I don't recall.

Q Incidentally, had you heard that he had been thrown out of that business in 1964?

A Thrown out?

Q In a family dispute.

A No, sir.

Q How many years did your organization provide financing to Yankee Plastics?

A Approximately two to three years.

Q When did it stop?

A I would say a year to two years before they went into Chapter Xi.

Q Chapter Xi being some sort of bankruptcy proceeding, for the members of the jury?

A Yes, sir.

Q Would you place that by the way of a date? Could you say roughly when you began to provide that financing and roughly when that financing stopped?

A It would just be a guess but to the best of my recollection I would say we started about '60 and stopped in '62 or '63.

Q Did you also provide financial services to a firm called Mr. Manger?

A Yes, sir.

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Q When did you begin to provide such financial services to that firm?

A As a guess, I would say '65, maybe '64.

Q Do you still provide financial services to that firm?

A Yes, sir.

Q What is the amount of loans outstanding between Commercial Trading and Mr. Hanger as of this date?

A Approximately $3,000,000.

Q Excuse me, I did not hear you. Three million?

A Approximately $3,000,000.

Q What is the largest amount of financing that you have ever extended to Mr. Hanger?

A I would guess about three and a half million.

Q What was the amount which you had extended to that company in 1966?

A 1966? Just to Hanger?

Q Well, when you say just to Hanger, let us qualify it. Was there another company as well connected with Hanger that you had extended money to?

A No, you are just talking about Mr. Hanger, I understand.

Q Or any of its subsidiaries.

A Or subsidiaries.

Q Right.

A In 1966? Perhaps five hundred thousand.

Q In 1967 what was the amount of financing that you had provided Mr. Hanger or any of its subsidiaries?

A I would guess, and it's only a guess, but I think it's reasonably accurate, perhaps 700,000.

Q During 1966 was there another company with which Mr. Rosen was associated besides Progressive or Mr. Hanger, to which you had provided some kind of financing?

A I can't recall offhand.

Q In 1967, apart from Mr. Hanger or Progressive Drug Company, was there another company with which Mr. Rosen was connected or associated, to which you had provided anything in the way of financing?

A I can't recall, sir. I don't believe so.

Q Would it be a fair statement, Mr. Grossman, to say that in 1967 that Mr. Hanger was in bad financial shape?

A No, sir.

Q When we talk about a current ratio -- withdrawn.

Are you familiar with the meaning of a current ratio?

A Generally.

Q What is the meaning of that?

A A ratio of the current assets to the current liabilities.

Q What would a good current ratio be?

A Good for what?

Q Good in the sense of lending money to an institution, to be considered sound in the way of risk.

MR. MUSOFF: If your Honor please, may I inquire into the relevancy of this line of questioning.

THE COURT: Before we get to the relevancy, I think you have a good point as to form, because I think we are entitled to know, Mr. Bush, are you asking him what would be a current ratio for an individual such as Mr. Rosen? I don't understand that.

MR. BUSH: No, no, a company, your Honor.

THE COURT: Well, which company? I assume it is a company, but I don't know whether you are talking about Mr. Hanger --

MR. BUSH: I am trying to ascertain from the witness, in the financial community --

THE COURT: No, no, I don't want to argue with you, sir. The question simply is: Which company?

MR. BUSH: First, generally, what is considered amongst financial institutions --

THE COURT: No, no, I understand that. But you are now asking about a certain company ultimately. What company? Mr. Hanger?

MR. BUSH: Oh, ultimately I will be addressing my attention to Mr. Hanger.

THE COURT: Understanding that, Mr. Musoff, do you still object?

MR. MUSOFF: Yes, I still object, your Honor, as to form and relevancy.

THE COURT: I am going to ask him to put his question again. I think it may be relevant to some testimony of Mr. Grossman on direct. But would you please rephrase your question, Mr. Bush, so we can follow you a little more clearly?

Q Mr. Grossman, is there amongst financial institutions lending in this area an understanding as to what a sound ratio between current assets and current liabilities would be with respect to issuing to such a company financing?

A I think that you don't quite understand our function. We do not make unsecured loans. We never go into the so-called current ratios. I am sure, though, in answer to your question, that the financial institutions such as the Chase and the Bankers Trust and First National City do look at current ratios.

Q Are you familiar with such ratios?

A We never use them. I know what --

MR. MUSOFF: If your Honor please, at this point I think this line becomes completely irrelevant. The witness has responded that he does not use this as a standard.

THE COURT: I agree. He has said that. Next question.

Q In 1966 had Mr. Hanger made any money?

A I don't recall.

Q In 1967 had it made any money?

MR. MUSOFF: Your Honor, I object again on the grounds of relevancy. This has no bearing on the direct testiony of this witness.

THE COURT: I am sorry, I disagree.

A I believe so.

Q When we say 1967, I mean by that the fiscal year --

A January 31.

Q -- of 1967. Is it your testimony, then, in the fiscal year ending January 31, 1967, that the firm known as Mr. Hanger had made income -- excuse me -- had an income on the plus side for that year?

A I believe so.

Q Now turning your attention to the fiscal year ending January 31, 1968, did it have an income on the plus side that year?

A I believe that one year they had a loss. I don't recall which year it was. But generally it was profitable.

Q Was the loss a small loss?

A I don't recall.

Q Was the loss in excess of $50,000?

A If I don't recall, I don't recall.

Q You have no recollection whatsoever --

A No, sir.

Q -- as to the nature of the profit or loss for the years in question.

A No, sir.

Q Is that correct?

A That is correct.

Q Turning your attention to the Progressive Drug Company, for the year ending December 31, 1966, was that company a profitable company?

A I do not recall.

Q Was there any concern on your part with respect to the moneys that you had extended to the Progressive Drug Company about repayment of them?

A Not a deep concern. We were concerned. We were watching it more closely than we would watch other people.

Q Were you also concerned with respect to repayment of the moneys which had been extended to Mr. Hanger?

A No, sir.

Q Would you have been concerned in the ordinary course of your business had Mr. Hanger lost in excess of a hundred thousand dollars for the year ending January 31, 1968?

A Not necessarily.

Q Would you be concerned or would you have been concerned had Mr. Hanger lost a similar amount for the preceding year?

A Not necessarily.

Q When you had these meetings with Mr. Rosen, did your discussions center solely on the Progressive Drug Company?

A Mostly, in a business sense, on Progressive Drug.

Q Well, did you have discussions about things in addition to business?

A We may have discussed the World Series, may have discussed the football game. We may have -- I mean, I didn't come in and say, "Larry, how's Progressive Drug?" But generally business was centered on Progressive Drug.

Q What percentage of your discussions concerned business and what percentage concerned any other matter?

A It's hard to say. I would say half of it was

business.

Q As with respect to the discussions concerning business, what percentage concerned Progressive, what percentage concerned Mr. Hanger or any other business?

A Most of it was Progressive.

Q You stated that on occasion there were other individuals present during these meetings or dinners, if you would; is that correct?

A Yes, sir.

Q Whowere these other individuals?

A Business acquaintances.

Q What are their names?

A Well, occasionally the principals from Progressive Drug were there.

Q What are their names?

A One was Mr. Henry Hainick; Mr. Press.

Q Besides Mr. Hainick and Mr. Press, who if anybody else was present?

A That was about it.

Q Were there ever any females present at any of these meetings?

A Yes, sir.

Q And who were they?

A Some young lady I was going out with was occasionally

there.

Q Were you married at that time as well?

A I was separated.

Q Who else?

A Other females?

Q Yes.

A None.

Q None? Just the young lady you were going out with. What was her name?

A Miss Johnson.

Q Where is she today?

A I really don't know.

Q At how many of the meetings was Miss Johnson there?

A Perhaps a third, perhaps a half.

Q Was she there to discuss business with you and Mr. Rosen?

A No, she was there to join us for dinner.

Q Did Mr. Rosen pay for her dinner as well as yours on the occasions when he picked up the tab?

A Yes, sir.

Q Would it be fair to say that maybe then a quarter of the expenditures that Mr. Rosen put out were for dinners or things of that nature for Miss JOhnson?

A A third.

Q A third.

A If she were there all the time. If she were there one-half the time it would be one-sixth.

Q That assumes, of course, that Miss Johnson ate the same-dollar-amount-wise that you and Mr. Rosen ate, I suppose?

A No, there were three people.

Q Who had the more expensive taste, you or Miss Johnson?

MR. MUSOFF: Your Honor, I am going to object to this.

THE COURT: I will sustain that objection to the last question.

Q Did you ever pick up any documents su bstantiating your expenditure of these moneys?

A I don't understand your question, sir.

Q Did you ever get a receipt when you picked up the tab?

A Occasionally.

Q You are a businessman, Mr. Grossman, are you not?

A I try to be.

Q How long have you been a businessman, sir?

A This is my 28th year.

Q And you are familiar, are you not, with what is

required to substantiate entertainment expenses in connection with your own tax returns, are you not?

A Yes, sir.

Q And it is your practice, I would assume, is it not, when you go out to eat, to get some kind of receipt or at least to maintain some kind of record as to those expenditures?

A Not necessarily.

MR. MUSOFF: Your Honor, I am going to object to this line of questioning also. Mr. Grossman's tax liabilities are not the subject of this case, and what he may do or not do has no bearing on Mr. Rosen.

THE COURT: I am inclined to agree generally with your objection. I don't see why we get into this line, Mr. Bush.

Q Mr. Grossman, have you ever heard of over $18,000 in unsubstantiated travel and entertainment expenditures in one year without any receipts to support it?

A Yes.

Q Other than in connection with this Progressive case.

A I am not talking about Progressive case. I don't know about that.

MR. BUSH: No further questions.

THE COURT: Any redirect, Mr. Musoff?

MR. MUSOFF: JUst one question, your Honor.

REDIRECT EXAMINATION

BY MR. MUSOFF:

Q Has anything that Mr. Bush implied in his questions to you changed your opinion about Mr. Rosen's reputation in the business community?

MR. BUSH: Objection; improper form.

THE COURT: Yes. I agree.

MR. MUSOFF: No further questions, your Honor.

MR. BUSH: No further questions.

THE COURT: Thank you, Mr. Grossman. You may be excused.

(Witness excused)

E R N E S T J. L E E, JR., called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOEY:

Q Mr. Lee, what is your business or occupation?

A Textile manufacturer, sales rep, and in the factoring business.

Q Wait a minute. Textile manufacturer and what?

A Sales rep in the textile business, and in the

finance business.

Q You mean a sales representative?

A Yes.

Q By that you mean you represent other textile firms?

A Other textile mills that I do not own.

Q And a sales organization, is that correct?

A Right.

Q Where is your textile business?

A Pennsylvania. My textile mills are in Pennsylvania, the ones I rep are in Pennsylvania. I have an office in Connecticut and a sales office in New York.

Q Do you know the defendant Larry Rosen?

A Yes, I do.

Q For how long a period of time do you know him?

A About twenty years.

Q Incidentally, Mr. Lee, are you a member of the board of directors of Mr. Hanger, Inc.?

A Yes, I am.

Q For how long a period of time have you been a member of the board of directors?

A Well, since Mr. Hanger was -- about '68.

Q Would that be subsequent to the time of the merger of Yankee Plastics and Mr. Hanger?

A No, this is when Mr. Hanger was there.

Q Oh, Mr. Hanger. Were you ever at Progressive Drug?

A Yes, I was.

Q On more than one occasion?

A Yes.

Q In 1965 what was your business, sir?

A Textile. Manufacturing textile and, you know, baby pants and sleepwear and children's underwear.

Q Were you associated with anybody at that time?

A Well, Early Manufacturing, which is a manufacturing company of baby pants; in the textile industry, yes.

Q Did you, when you went to Progressive Drug, go there with Mr. Rosen?

A Yes, I did.

Q Did you have occasion to do anything with Mr. Rosen concerning Progressive Drug?

A Yes.

Q Would you kindly just tell us in your own words what you did with Mr. Rosen with regard to Progressive Drug?

MR. BUSH: May I have a date on this, your Honor.

THE COURT: In the fulness of time I trust we will. Go ahead.

Q Go ahead.

A I went there with Larry, and some place in the Bronx, and I saw the whole operation, I saw their salesroom with different items in there, and I said to Larry, I says, "Larry," I says, "you got a captive drugstore chain that we could really market some products that I manufacture, and I think it could be very feasible to do this."

At the time I manufactured children's baby pants, I manufactured underwear for children, and children's sleep-wear.

He said to me, he said, "What do you mean by this?"

I said, "Well, God, if we could get a name, a brand name or come up with a brand name that we could market it through Progressive Drug, this would be very good for both my business and for Progressive Drug's business."

Subsequent to that he says, "Let's think about it and see what areas thatwe could, you know, pursue."

I set up some meetings with both people in the textile industry that I represented, also the person that I was connected with, a man by the name of Mr. John Jansen, who represented four textile mills. These mills now I represent myself, because he is dead. We sat down on numerous occasions, hashing this back out, you know, to see how we could do it, what the percentage of ownership would be in it, what the markup would be, and then we decided that, "Gee, this is

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great, but let's try to see and find a name."

In my industry I have been very friendly with the people in Doctor Denton, who is a major manufacturer of children's sleepwear, and at that time they only marketed sweaters and sleepwear, nothing else.

I set up the initial meetings, set up the contract that my manufacturing company, Early Manufacturing, would manufacture children's baby pants under the Doctor Denton label.

I was not a principal of Progressive, so therefore I could not institute the meetings, you know, with the people from Progressive, so I set up Herb Carroll, who is the chairman of the board of Doctor Denton in Chicago, for meetings with Larry, and --

Q Did Mr. Rosen go to Chicago and there speak to Mr. Carroll?

A I think about three times, and Mr. Carroll also came into New York with an Elliot Saunders, who is -- I think Herb Carroll is chairman of the board and Elliot Saunders is the president.

Q All right.

A With all these meetings, then Mr. Jansen and Larry, they met on many occasions when I wasn't there, because I still hadto go out and do my selling trips.

I would say, in all --

MR. BUSH: I am going to object to this perpetual monologue at this time. He is testifying as to things which occurred when he wasn't there, and so on and so forth.

THE COURT: In any event, as I understand it, you say to your knowledge Rosen went to Chicago three times to visit this Doctor Denton; is this it?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Were there other occasions at which meeting were held in public places, restaurants?

A Many.

Q Were they held -- well, was there a local representative vice-president of the Denton Industries called Stanley Gross?

A Yes.

Q Were you present at meeting which Rosen had with Mr. Grossman?

A All of them.

Q How many meetings in all were they?

A With Mr. Gross there were at least 12. With Mr. Janzten that I attended there was at least 25.

Q And these meeting were with regard to Progressive Drug?

A Right. And Dr. Denton, trying to get the names so that we could use it at Progressive Drug and also use it with their sleepers and baby baskets?

Q Were there expenses involved in this?

A Yes.

Q Who paid the bills?

A To my knowledge, Mr. Rosen did.

Q Did you pay them?

A Never.

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Q Did Mr. Janzten pay them?

A Not him.

MR. FOLEY: You may inquire.

CROSS EXAMINATION

BY MR. BUSH:

Q Your name is Earnest J. Lee, is it?

A Yes, sir. Jr.

Q And you are one of the directors of Mr. Manger at this time, is that correct?

A Yes, sir.

Q How long have you been a director?

A Since '68.

Q Prior to that what relationships, apart from this Progressive situation, in a business sense have you had with the defendant?

A None.

Q But you have known him for some 20 years?

A Right.

Q How did you first happen to meet him?

A Well, he was going out with a girl by the name of Dori. My wife was a show girl and we used to go to the same shows. They became friendly and we became friendly and we built up a very lasting relationship.

Q What expertise do you provide to the board of

directors, Mr. Lee?

A I am in the textile industry and inasmuch as the hangers are sold to the textile industry primarily, I think that I do show expertise.

Q When you say you were trying to arrange a deal with Dr. Denton, I take it that Dr. Denton is the brand name you were interested in?

A Right, they also manufactured children's sleepwear.

Q Let me understand this. Some other textile concern was going to manufacture garments?

A Mine.

Q Your textile concern was going to manufacture garments which were going to be or have the Dr. Denton label, is that correct?

A Right.

Q Then after these garments were manufactured they would be placed through Progressive into various drug stores in New York?

A Right.

Q In other words, the deal would benefit you financially, would it not?

A Yes.

Q And I assume that it would have benefitted Mr. Rosen financially as well?

A Progressive.

Q Was Mr. Rosen an owner in Progressive?

A He must have been connected or else he would not have taken me there.

Q Was he going to be an owner or joint partner in this new venture of yours?

A No.

Q Was he going to have any interest in it in any manner whatsoever?

A Subsequent to those meetings when we tried to buy Dr. Denton, yes.

Q When you tried to buy Dr. Denton Mr. Rosen was going to own part of Dr. Denton, I take it then?

A Yes.

Q What percentage was he going to own in Dr. Denton?

A I think his was a fourth, 25 percent.

Q And you were to own 25 percent?

A Yes.

Q Mr. Janzten was to own 25 percent?

A Right.

Q And Mr. Gross was to own 25 percent?

A Right.

Q Therefore, if these sweaters, or whatever they were, were manufactured and sold by Dr. Denton as owned by you

individuals through Progressive you would have made money on it, would you have not?

A Yes.

Q Personally?

A Yes.

Q Mr. Rosen would have shared a quarter of those proceeds, would he not?

A Yes.

Q So his interest in these meetings then as concerns so-called Progressive was also a personal financial interest, was it not?

A Well, these meetings didn't come until a year later on buying the label. The initial meetings was for them to make it under their own name and we manufacture for them --

Q And when they are manufactured --

MR. HOFF: May the witness be permitted to finish his answer. I think he was cut off.

THE COURT: Were you cut off?

THE WITNESS: I think so. The initial meetings with the Dr. Denton people had nothing to do with buying them. It had to do with using their name under a licensing arrangement where my company, which was Early Manufacturing, would make baby pants for them. We would use their name.

They would get a percentage of the profits. Actually they would be the seller. Denton would be. Darly would manufacture under contract arrangement with Dr. Denton. Dr. Denton then would use Progressive Drug as a distributor. Progressive then would distribute it to the drug stores. That is all.

Q You would own ultimately Dr. Denton if it worked out well?

A No.

Q If it didn't work out well you would own it?

A Not then.

Q But later?

A This was over a year and a half later.

Q When did you first have your first discussion?

A On buying it?

Q On buying.

A I would say 1968.

Q You had your first discussion in 1968 --

A Because they didn't want to sell.

Q Were you aware that at about that time Progressive -- Company was in bankruptcy?

A That had nothing to do with this deal.

Q Were you aware of that?

A Not really.

Q And yet you were going out to buy this company so that you could sell various goods through it and very shortly it was going into bankruptcy?

A You are wrong. I did not say that. I was looking to buy the name. I have four textile mills that make children's sleepwear and it would be good for me to have the Mr. Benton name.

MR. MOSY: No further questions.

THE COURT: Any redirect?

MR. MOSY: No, your Honor.

THE COURT: You may be excused, Mr. Lee.

(Witness excused.)

THE COURT: Ladies and gentlemen of the jury, we will take our afternoon recess.

(The jury left the courtroom.)

(Recess.)

(In open court - jury not present.)

MR. MOSY: I have two more witnesses.

THE COURT: Fine.

MR. MOSY: They will probably take a half, three-quarters of an hour. Then I would appreciate it if you would go over until tomorrow so I can put in a chronological defense.

THE COURT: I should tell you and Mr. Bush that

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the jurors have been expressing their complaints or, rather, I should say more accurately, their concern about how long this case is going, the reason being that under the great -- and I put it in quotes -- "unwritten rule" to the effect that they only serve for two weeks is coming into play.

MR. MOSY: I can see that is a problem.

THE COURT: I don't think it is too serious because those things happen. It is not your fault but they are a little restless from what I gather.

Second of all, do I understand that you have two more witnesses here today and then how many more witnesses would be that?

MR. MOSY: The defendant's case would be finished early tomorrow. I will put one other witness on or two other witnesses and then Rosen.

I will tell you the reason. I had to rush today because Mr. Bush indicated -- and I am not criticizing him in any way -- that he thought he would take up most of today.

MR. BUSH: I never indicated that to Mr. Mosy.

THE COURT: Let's not debate that. We are where we are. I am not interested in criticizing either one of you. You have been struggling after my admonitions yesterday

for which I am grateful. Let us go ahead and see how we do. I just would ask you once again, besides the defendant do you anticipate calling anybody else tomorrow? I don't want to know who; just how many.

MR. HOFY: Probably two short ones, except for the technical man.

THE COURT: Then I would like to be able to say to the jury that I think we are hoping to get the case to them tomorrow afternoon. I see no reason why not. The issues in this case, which again I recognize are important to both the defendant and the prosecution, are really not that complicated.

MR. BUSH: I may have, incidentally, one or two rebuttal witnesses.

THE COURT: We will get to that problem when I get to it. Did you hear what I just said, Mr. Bush, about our jury/

MR. BUSH: I heard what you said.

THE COURT: You better think about that one too.

I would like to be able to say that to the jury. I don't want to bind you, but I would like to say that there is a good chance of finishing tomorrow, unless you flatly tell me you don't think so, in which event I wish you would.

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MR. HOEY: At this point I could not tell you, your Honor. I don't think so.

THE COURT: I will tell them something else, then, which would alleviate their situation.

Bring in the jury.

(Jury present)

THE COURT: All right, Mr. Hoey.

MR. HOEY: I call Mr. Stern.

L E O N M. S T E R N, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOEY:

Q- Would you kindly keep your voice up so the jurors will hear you.

Do you know Larry Rosen?

A Yes.

Q For how long a period of time?

A A minimum of ten years.

Q What is your business, sir?

A Chairman of the board of a company, Photo-Marker Corporation.

Q Where is Photo-Marker, Inc.?

A In the State of New York.

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Q Are they in Florida also?

A We have offices in Florida and Los Angeles and Philadelphia.

Q Did you ever go to Progressive Drug?

A Yes.

Q Where was it located at the time?

A In the Bronx.

Q - Would that be in 1966?

A Yes.

Q Did you go there on more than one occasion?

A I would say two or three.

Q With whom did you go there?

A With Mr. Rosen and an associate of mine, Murray Cohen.

Q By the way, what is the business of Photo-Marker?

A We manufacture and distribute sensitized paper and machinery for the garment industry.

Q Have you in the past been involved in any other businesses?

A Yes.

Q Were you involved at any time in a candy business in any way?

A Candy, nuts, and accessories.

Q Were you what is commonly known as a jobber?

A Y-es. We had a couple of retail stores also, but our prime business was the wholesale end of it or distribution.

Q Did you have occasion to distribute to airlines and to other outfits for nuts and candies?

A Yes.

Q Did there come a time when you went to Progressive Drug -- by the way, do you know a man by the name of Murray Cohen?

A Yes.

Q When you went there whom did you see at Progressive?

A I think we went with Mr. Rosen, and there was Richard Bertoli and Larry Press and maybe one or two other gentlemen whose names I don't recall.

Q What was the purpose of your going there and having a meeting at Progressive Drug?

A Mr. Cohen was my packager and wholesaler. I was the distributor. We were looking to increase our lines and possibly through Progressive Drugs distribution and our own we could make a combination of additional sales.

Q Did you have more than one or two meetings at Progressive Drug?

A I would say a couple at the drug place, two or three.

Q Did you have meetings outside of the drug company?

A Yes.

Q Where would those meetings take place?

A I think we had one meeting in Long Island City with Mr. Rosen and Mr. Bertoli and Mr. Press. We had meetings in the candy company. We could have had a meeting at my office on 37th Street. We had meetings in restaurants, two in California, one in Las Vegas. I think Mr. Rosen came to my home once and we had a meeting there. I would say there were about fifteen meetings in all, approximately.

Q Who paid the expenses of these meetings?

A When they came to my home I shared the entertainment and the restaurants; Mr. Rosen is quite sporty and he did spend money and I spent some in California. Mr. Rosen paid his own expense and I paid mine. In Las Vegas I believe that at the time we went to Las Vegas I was affiliated with the Dunes Hotel so part of the rooms were complimentary and because I complimented Mr. Rosen's rooms he was picking up checks outside the hotel where it wasn't complimentary.

Q He was paying for it?

A Yes.

Q Was that done on behalf of Progressive Drug, go

to California on behalf of Progressive Drug?

A My business was; I assume Mr. Rosen's was too.

Q He accompanied you?

A Yes.

Q Did he have any other independent business out there that you know of?

A Not to my knowledge.

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Q And when you went to California, whom did you see, Mr. Stern?

A A fellow named Ralph Sparracino, who was in the foods business out there, and Major Riddle, who had about six drug outlets, big drug outlets on the West Coast, and he was also president of the Dunes Hotel. It was quite some time ago, but you know we had a half a dozen meetings at least.

Q Did you also bring any other proposition regarding any import to Progressive Drug?

A Yes. My Photo-Marker Company, the one I am chairman of, has agents in Taiwan and in Hong Kong and Tokyo, and I think my Japanese agent was in Los Angeles at the time and we did meet with him -- at least we called him from there. I don't recall if he was there or not. But we did discuss bringing in lashes, eyelashes, and mascara and things like that for Progressive Drug.

Q Did you thereafter talk to anybody in Progressive Drug other than Mr. Rosen concerning the importation of eyelashes from Taiwan or Hong Kong?

A I may have had -- I think Mr. Cohen and myself may have had another meeting with Mr. Press without Mr. Rosen being present. It could have been another one; it is quite some time ago.

Q You are friendly with Mr. Rosen, are you not, sir?

A Yes.

Q Do you know his reputation for honesty?

A Yes.

Q What is it?

MR. BUSH: Objection, your Honor. What community are we speaking about here?

THE COURT: Mr. Hoey can ask that.

Q Do you know other people who know him in business?

A Yes.

Q Have you ever talked about Mr. Rosen's reputation for honesty?

A Yes, he has been a hundred percent honest with me and everyone that I know has done business with him. We deal with many of the same customers in our field.

MR. BUSH: Objection as to any further answer other than to what he knows his reputation in the community to be.

A I know it to be a hundred percent honest, to the best of my knowledge.

Q How about on the question of integrity, Mr. Stern?

A That too. He has been a good friend and we have done business together, he has been a hundred percent honest

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in any and all transactions with me.

MR. HOEY: No further questions.

CROSS-EXAMINATION

BY MR. BUSH:

Q What was the name of this candy concern that you and Mr. Cohen apparently were affiliated with?

A Mr. Cohen's company was Cendee, C-e-n-d-e-e.

Q Did you have a company as well?

A Yes, mine was Bucket Shops Limited -- Bucket Shops, Ltd.

Q Where did these companies do business? Where was their home office, to begin with?

A Mr. Cohen's company is in Plainview, Long Island. I don't know the exact address.

Q And yours is where?

A We had two locations. We had one on 57th Street and Lexington Avenue, and we had one on 23rd -- 25th Street and Fifth Avenue.

Q Where did Bucket Shops do business? That is your concern, is it not?

A Yes. All over. Wherever we could.

Q Well, this is 1966. Where was it doing business then?

A Oh, in New York and in Las Vegas.

Q Any place else?

A Possibly California. Now, some of our products, we sold a lot of our products to airlines that went -- you know, we may have shipped it to Kennedy Airport, but it went all over the country and I have no way of knowing that.

Q Bucket Shops, then, was doing business in New York, is that correct?

A The two offices and the warehousing was in New York, yes.

Q Was it also selling candy in New York?

A Yes.

Q And it was doing business, I take it, you said, in California?

A I said possibly in California. I did do some business in Las Vegas, and I also said that,you know, even though we shipped to an airline in New York at Kennedy, it could have gone any place.

Q I understand the package of candy might have ended up at Chicago?

A No, I meant more than that. Because we had special programs, especially during the Christmas season, they have a Fair Lady's program, where we'd mail out to 18,000 executive secretaries the various gifts. So I wanted to be clear in saying that it could have gone any place and

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we could have shipped it any place.

Q Any place besides New York, California and Las Vegas that you can specifically remember?

A Tulsa, Oklahoma, which is their maintenance base, I remember some shipments going out there; Boston, Dallas -- it's just too numerous, very numerous.

Q How about Cendee?

A Cendee, C-e.

Q Cendee. Where was it doing business?

A Their main business were up -- markets in the Long Island and Metropolitan New York area.

Q Any place else they were doing business?

A I couldn't tell you if they did. I knew their main concentration was in the New York Metropolian area, Long Island, Queens.

Q Did they do business any place outside of the New York City area?

A I couldn't answer that. Jersey possibly.

Q You and Mr. Rosen went where, now? You had some meetings in New York, I take it; is that right?

A Yes. Youwant to know the specific locations?

Q No, I am trying to pin down the general geographical locations.

A Bronx, New York, Bronx.

Q Well, New York would include the Bronx, I would assume.

A Oh.

Q Did you also have meetings, I think you said, out in Las Vegas?

A Yes, I said we traveled to Los Angeles, and then we came back through Las Vegas.

Q You traveled to Los Angeles. Where else?

A Las Vegas.

Q Any place else?

A I don't -- we've traveled other places together, but in reference to what you are talking about with Progressive Drug, I can't --

Q Did you go to Taiwan?

A No.

Q Japan?

A No. I may have gone, but Mr. Rosen didn't go with me.

Q Where does Progressive do business, or did it do business at this time?

A I have no idea.

Q To your knowledge did it do business in New York?

A I have no idea.

Q Do you have any idea whether it did any business

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outside of New York?

A I wouldn't know. I was not active in that business. I was there actually as trying to do business with them.

Q You were attempting to do business with them?

A Correct. And they with me. And they with me.

Q It was your desire, in other words, to sell them candies from Bucket Shops, I take it?

A Yes. And if we could help them with some of their products we would be able to do that.

Q Were you hopeful that Progressive would distribute your Bucket Shop candies to California?

A Sure. I wouldn't care where they shipped it.

Q To Los Angeles?

A If they so desired.

Q To Oklahoma?

A OK.

Q To Boston?

A OK.

Q To Dallas?

A OK.

Q Where else did Bucket Shops do business?

A No, you just asked me about Progressive Drugs.

Q But I say where else did Bucket Shops do business?

I am curious as to where else you wanted Progressive to send them candy?

A Oh, I wouldn't care where Progressive did business. My concern would be to ship them our packages in whatever packaging they desired. We designed -- we made preliminary designs on racks for the candy. To my knowledge, they were distributing to drugstores and chains. That was my knowledge.

Q Did Mr. Rosen have any interest in Bucket Shops?

A No.

Q Did he have any interests in Cendee?

A Not to my knowledge.

Q Were you given a commission for selling a certain percentage of your candies?

A Either we'd work out a net price and -- no business was ever transacted, mind you.

Q No, I understand that.

A Yes. But we either would work on a net price or a commission.

Q This is for Mr. Rosen now.

A No, for Progressive. We weren't dealing with Mr. Rosen that much as an individual, but rather he represented an interest in Progressive Drug.

Q Did he tell you he was an owner of Progressive?

A He said he had an interest in it. Whether that means he had an owner -- was an owner or not -- I had an interest in Cendee but I was not an owner of Cendee.

Q Was he an officer or employee of Progressive?

A I don't know.

Q How many times did you actually go to visit the Progressive Shops, or offices, I should say, in New York City here?

A In New York City? You mean in the Bronx? Is that what you mean?

Q In the Bronx.

A Yes. Two or three times.

Q Did you go to Progressive offices any place else?

A I have never been to any, to my knowledge.

Q What kind of concern was Progressive?

A What do you mean?

Q What kind of concern was it? What did it do? What kind of business did it do?

A To my knowledge, it distributed drug products to drugstores and chains.

Q Did it distribute drug products in Boston?

A I have no idea.

Q Did it distribute them in Las Vegas?

A I have no idea.

Q It was your testimony on direct that you went on behalf of Progressive to Las Vegas, did you not?

A That was not my testimony. My testimony was I went with Mr. Rosen.

Q To Las Vegas?

A To Los Angeles. On the way back we went to Las Vegas.

Q And did you --

A We were attempting, Mr. Rosen --

Q Excuse me just a second, Mr. Stern.

MR. HOEY: May the witness be permitted to complete his answer? I know he was rudely interrupted.

MR. BUSH: Your HOnor, would you direct the witness to answer a question which may be answered yes or no in a yes-or-no fashion?

THE COURT: I frankly have forgotten the question, so why don't you start over again.

Q Did you discuss Progressive's business in Los Angeles?

A With Mr. Rosen, yes, and the other people that we saw, yes.

Q Who else was there?

A I said Mr. Sparracino and --

Q Let us stop with Mr. Sparracino for a moment, and

we will pick up the rest. In what line of business was Mr. Sparragino?

A Sparracino.

Q How do you spell that, sir?

A I will do the best I can. S-p-a-r-r-a-c-i-n-o.

Q What line of business was he in?

A He distributed to hotels and pizza parlors and restaurants.

Q What did he distribute?

A Food supplies.

Q Including candies?

A He may have had a candy line. I couldn't answer for him.

Q Where was Mr. Sparracino's business located?

A His office -- his main distribution point was in Las Vegas.

Q What kind of foodstuffs did he sell?

A To my knowledge -- I don't know his complete line -- but he was in the box business, you know, pizza boxes, mozzarella cheese, tomatos, and he was very entrenched in various hotels and restaurants and pizza parlors.

Q Selling pizza boxes and mozzarella cheese?

A Yes.

Q And his main office was in Las Vegas, you said?

A I believe his main office was in Las Vegas.

Q So you were not at his main office in Las Vegas when you covered this particular business transaction?

A No, he met us at the hotel, I believe.

Q At Las Vegas?

A I believe so. I believe we stayed at the Beverly Hilton or something.

Q Over what area did he sell this mozzarella

cheese and pizza boxes and things of that nature?

A I don't know his entire area of distribution, but I know California and Nevada were two major points of his distribution.

Q Who else was out ther in California when you and Mr. Rosen were there?

A My wife. You mean who we met together?

Q Either who went with you or whoever you met out there, the whole group that was in California. That is what I want.

A Well, my wife, Mr. Rosen and myself went together.

Q I see. Your wife, Mr. Rosen and yourself.

Now, you met Mr. Sparracino --

A I say we possibly could have met Mr. Shinzo Horie there.

Q Let's stop with Mr. Horie for a moment. In what line of business is Mr. Horie engaged?

A Many lines, but he is my representative in Tokyo and has been for the last 15 years.

Q He was your representative with these false eyelashes?

A No.

Q Or whatever they are?

A No.

Q Your Photo-Marker representative?

A My Photo Marker and my candy and we also were in the fishing fly business if it means anything.

Q What other lines of business was Mr. Horie in?

A Rods and reels, paper --

Q Wait a minute. Let's take them one by one here. Rods and reels, that is fishing, I take it?

A No, that was a different operation. The flies were all hand-tied.

Q All right. We have fishing flies and rods and reels.

A Right.

Q And what else?

A Paper.

Q What kind of papers?

A 100 different types of papers. For boxes, for production. That is my main business.

Q This was just sort of paper that could be formed into more finished products, I take it?

A Yes. But at the mill level. They were in juvenile furniture made out of paper. There so many facets.

Q In other words, they supplied the raw supply of paper and somebody else would fashion it into --

A No, certain segments of their business was to structure the papers, maybe even make boxes or furniture.

Q How did they structure the paper? Into boxes?

MR. HOEY: Your Honor, I think we are getting really far afield in this.

THE COURT: Yes, I think we can skip the structuring and manufacturing.

Q Let's call that paper. What else did he do?

A Fishing flies, rods and reels, inflatable furniture.

Q What kind of furniture?

A Inflatable. You know, vinyl.

Q Vinyl furniture. What else?

A Apparel industry supplies, you know, general machinery -- they were both in so many fields and that is why --

Q Let's try to cover them all if we could. Apparel industry supplies.

A Yes.

Q What else?

A And --

Q What is apparel industry supply, to begin with? Is that a machine of some so-t?

A Machine, yes.

Q Heavy machinery?

A No, it wouldn't be classified as heavy machinery.

Q Is it sewing machines?

A Sewing machines, cutting machines, special buttonhole machines, that type of machinery.

Q I see. What else?

A And I don't know if he was actually engaged in the manufacture of eyelashes, but through his fishing fly company he had access to this type of material in whatever they were doing. We knew --

Q And where -- did we miss something?

A I say we knew very little about that type of manufacturing.

Q Over what geographical area did he do business?

A The world.

Q Mr. Horie, I take it, is Japanese or something of that nature?

A He thinks he's Jewish, but he is Japanese.

Q Who else was out in California there?

A Albert Feuerman.

Q How do you spell that?

A F-e-u-e-r-m-a-n.

Q What did he buy or sell?

A He is my branch manager for Photo-Marker out there.

Q He is your branch manager.

So he wasn't buying or selling anything.

A We were asking him -- he lives out there for 15 years or 16 years -- and we were asking him about various market locations, and I think Mr Poser and myself and my wife and Mr. Sparracino had dinner out there.

Q Various market locations for what type of product?

A For the West Coast. Well, his prime business is working for the Photo-Marker Corporation but he does know a lot of people out there.

Q Were there any other products mentioned?

A We discussed candy, and Mr. Feuerman has purchased candy and various other sundries, buckets, type buckets, from Bucket Shops, and Mr. Rosen and I discussed it, he would like to spread out and do business on the West Coast.

Q So Mr. Feuerman, I take it, was familiar with marketing outlets in California?

A Yes.

Q That is what you were discussing?

A He is very far from an expert, because he is --

Q But he was familiar because he lived there, I take it?

A Yes.

Q Who else did we have? I take it your wife was along for pleasure?

A Yes.

Q Or was she also in the business?

A Yes, but she was active in the Bucket Shops.

Q Who besides your wife, Mr. Posen, Progressive and the other three gentlemen you have already talked about?

A Major Riddle did I mention?

Q Major Riddle. I thought that was a product; didn't know it was a person.

A No, that is a man.

Q I see.

A It is not a riddle. It is Major Riddle. That is his first name, "Major".

Q I see. That is R-i-d-d-l-e, is it?

A Correct.

Q What does Major Riddle do?

A At that time he was the president of the Dunes Hotel and Country Club, and he owned about six or seven drug outlets. Two in Las Vegas and I think four in Los Angeles.

Q He owned drug outlets in --

A Drugstores, yes.

Q Drugstores, all right.

A Retail outlets. That is what I mean to say.

Q The kind of drugstore you and I would go into

on the street corners and buy some Band-Aids from or something like that?

A Right.

Q And he owned those drug outlets where?

A In Las Vegas and in California, Los Angeles. He may have had one in San Francisco, I'm not sure, but I think he had about six in total, and I think two were in Las Vegas, one in San Francisco, and maybe three in Los Angeles.

Q In any event, we would be safe in assuming, would we not, that he owned drug outlets in California and Nevada?

A And Nevada.

Q None outside of those two states, I take it?

A Not to my knowledge.

Q Now we have got Mr. Sparracino, Mr. Horie, Mr. Feuerman and Mr. Riddle. Who else if anybody was there?

A It could have been another friend of mine. Is it important that I remember all this if it does not pertain to it or you want to hear it anyway.

Q I would like to hear it.

A Well, there is one fellow, Fred Klingler, but he is dead now.

Q Well, let's not pass over him. How do you spell his last name?

A Klingler, K-l-i-n-g-l-e-r.

Q And he was a friend of yours?

A Yes, he was a paper supplier of mine in Los Angeles.

Q Paper supplier.

What other business if any was he engaged in?

A Just the paper business, to my knowledge.

Q Where did he do business, in Los Angeles?

A He did business on the West Coast. His plant was in Torrence, California.

Q Torrence?

A T-o-r-r-e-n-c-e.

Q Did he do business east of Nevada or east of California? Maybe that is a better way of putting it.

A East of California? I don't know. I would say California.

Q Just California.

A Well, just as a guess.

Q Can we say that he did business solely west of the Mississippi?

A Yes.

Q Now we have got five individuals in addition

to you, Mr. Posen and your wife. Incidentally, was Mr. Posen's wife with him?

A No, she was not.

Q Who else did you meet in Los Angeles?

A I know a lot of people there. I just can't remember, you know, all the people.

Q All those that you can remember at this time.

A I have to limit it to that without guessing. I know 500 people in Los Angeles and about a thousand in Las Vegas, so I just --

Q The only people that you can remember at this point that you spoke to out there were Mr. Sparracino, Mr. Horie, Mr. Feuerman, Mr. Riddle, and Mr. Klingler. Is that right?

A At this time that's all. If you want to read a name to me and I will remember --

Q No, no, you are the witness.

A I just don't recall, you know, any particular meetings with Mr. Posen other than these that we have.

Q This is the Los Angeles group, right?

A Right.

Q Let's turn to the Las Vegas group.

A We are going to have fun on this one.

Q As I understand, you first went to Los Angeles,

and then you came back, and on the way back you stopped in Las Vegas; right?

A Right.

Q Let's cover Las Vegas. I take it you and Mr. Rosen and your wife were in Las Vegas as well, is that right?

A Right.

Q Whom did you meet there?

A Major Riddle for one.

Q All right. We have already covered him. Mr. Riddle was there. Who else?

A Bob Kelly.

Q Bob Kelly. Who was he?

A At that time he was the maitre d'at the Dunes Hotel and a friend of mine.

Q What business was he in?

A He was a maitre d'.

Q That is all. Okay. Who else?

A It's voluminous. I could name 100 people.

Q Let's keep going.

MR. HOEY: Your Honor --

Q I don't want any chitchat but who you talked to in the way of business out in Las Vegas.

A Oh, in the way of business. Mr. Sparracino.

Q I take it Mr. Sparracino is the same Mr. Sparracino who was in Los Angeles?

A Right, right.

Q Who else?

A Bob Kelly.

Q Mr. Kelly is the maitre d' at the Dunes?

A Yes.

Q So we have covered him.

A He knew everybody that was anybody out there. He was out there for about 20 years. And I thought he could be helpful to Mr. Rosen.

Q He knew a lot of people in Las Vegas?

A Right.

Q Who else?

A Mr. Riddle, I said.

Q All right.

A A fellow named Robert Mandell.

Q Robert Mandell.

A I believe we met him out there at that time.

Q Who was Robert Mandell?

A I was in the real estate business out in Las Vegas and he worked for me out there.

Q You were in the real estate business and he worked for you out there.

A Right. And my --

Q What did he do other than the real estate, or other than real estate, if anything?

A I think he was a clothing salesman in a retail outlet.

Q Anything else?

A What else Mr. Mandel did?

Q Yes.

A Just a real estate man and that.

Q All right.

A And --

Q Who else was there beyond Mr. Mandel?

A I think Mr. Rosen met my attorney, Mr. Louis Wiener.

Q Louis Wiener. And his offices are where?

A In Las Vegas. He is my attorney out there.

Q I see. Now, other than being an attorney, is Mr. Wiener also a businessman of some sort?

A A very good one.

Q What businesses is he engaged in?

A Real estate and hotels.

Q What else?

A I think he is a director of a bank out there. I could be wrong. He might have been at the time.

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Q Anything else?

A No. Just real estate and hotels.

Q Beyond Mr. Wiener?

A I think Mr. Rosen met my partner, Louis Davidson, who was my partner.

Q Let's drop back, and I don't mean to interrupt you, but we will pick it up. I take it Mr. Wiener was your attorney. Was he also Mr. Rosen's attorney?

A He would have been if they ventured out there, I am sure.

Q I see. But at this point --

A At this point he was my attorney, yes.

Q And Mr. Rosen had not known Mr. Wiener prior to --

A To my introduction, I don't think so.

Q -- this occasion. Going beyond Mr. Wiener, whom do we have?

A Mr. Davidson was out there.

Q Mr. Davidson?

A Louis Davidson.

Q What does he do?

A He was my partner in the real state operation.

Q In Las Vegas.

A In Las Vegas.

Q What else does he do?

A He doesn't do anything. He is dead, too, with Klingler.

Q No, no, I mean what did he do in 1966 or 1967?

A Just real estate and construction.

Q What else, if anything? Nothing? Just real estate and construction?

A Other than we may have talked to another half a dozen people. We were there, I think, about six or seven days, because my wife got ill. We were only going for two days. My wife got ill and we stayed an additional three or four days. And we could have talked to a lot of people, but this is ten years ago, I believe, you know, eight years ago, and it is hard to remember.

Q I just want what you remember now.

A Yes.

Q You planned to stay for two and you stayed for five or six because your wife got ill?

A Right.

Q Is there anybody else that you and Mr. Rosen to your knowledge talked to in the way of business in Las Vegas?

A I can't remember any more specific names.

MR. BUSH: I have no further questions of this witness.

THE COURT: Mr. Hoey?

MR. HOEY: I have no further questions, your Honor.

THE COURT: Thank you, Mr. Stern. You may be excused, sir.

THE WITNESS: Thank you.

(Witness excused.)

MR. HOEY: Mr. Zuckerman.

B E N J A M I N Z U C K E R M A N, a witness called by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOEY:

Q Mr. Zuckerman, what is your business or occupation?

A I am the president of Mr. Hanger.

Q Do you know Larry Rosen?

A Yes, indeed.

Q How long have you known him?

A 25 to 30 years.

Q Are you related to him through marriage?

A Yes, I am.

Q What is your relationship?

A My wife's sister is his mother.

Q Are you feeling well, Mr. Zuckerman?

A No. I had to come out of a sick bed to testify.

MR. BUSH: I am certainly willing to let Mr.

Court says that we can show them Rosen that he didn't get 7,800 from Mr. Hanger, Inc. R442 P.435 crooked books 517 507 564 334A

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jgk

United States of America,

vs.

73 Cr. 408

Paul Lawrence Rosenrauch

New York, N. Y.
February 28, 1974 - 10:00 a.m.

(In open court - jury present.)

THE COURT: Good morning, ladies and gentlemen.

Mr. Musoff.

MR. MUSOFF: Your Honor, the defendant calls Mr. Conrad Ekert to the stand.

C O N R A D E K E R T, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSOFF:

Q Mr. Ekert, what is your occupation?

A Controller for Mr. Hanger, Incorporated.

Q How long have you been so employed?

A October, 1972.

Q What are your duties as the controller of Mr. Hanger?

A I am responsible for the books and records of Mr. Hanger, filing tax returns, preparing the financial statements of the company and all of its subsidiaries.

Q In the normal course of your duties as controller of Mr. Hanger do you keep custody of all of the financial records of that corporation as well as its subsidiaries?

A Yes, I do, except for Mr. Hanger Quebec on which we have a limited investment.

Q Was Utility Holding Corporation a wholly owned subsidiary of Mr. Hanger?

A Yes, it was.

Q I show you Defendant's Exhibit B marked for identification. Would you please inspect that? It is a folder of documents.

A These are the records of Utility Holding for the year ended 1/31/68.

Q Were those records prepared and kept in the ordinary course of business?

A Yes, they were.

Q Was it the ordinary course of business to keep and makr those records?

A Yes.

MR. MUSOFF: Your Honor, I offer Defendant's Exhibit B for identification in evidence.

MR. BUSH: Might I see it first?

THE COURT: Certainly.

MR. BUSH: I would enter an objection on the grounds

of relevancy. As I understand it, these are the records of Utility Holding Company for the period ending January 31, 1969. I don't see the relevancy of it.

THE COURT: Offhand I don't either. Of course, I haven't seen the documents but perhaps you can help government counsel and the Court, Mr. Musoff. There must be some portion of these records --

MR. MUSOFF: There is, your Honor. If you recall, the government similarly offered documents pertaining to a fiscal year-end January 31, '69.

THE COURT: No. On that simplistic notion everything that happened in 1968 in the world would pour in here. You don't mean that. More seriously, please, there must be some portion of the record that you are interested in that has something to do with our case and if so could you show it to Mr. Bush so that we know what is going on here?

MR. MUSOFF: Yes, your Honor.

(Pause.)

MR. BUSH: I think perhaps counsel should make an offer of proof on the record because I am going to object to it on the grounds that it is entirely collateral.

THE COURT: Maybe I can save some time.

Would you let me see this please, Mr. Musoff.

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MR. MUSOFF: Yes, your Honor.

I think perhaps, your Honor, if I do make an offer of proof the relevancy will become readily apparent.

THE COURT: You are offering all of these things which are largely work sheets, every bit of this you want to offer?

MR. MUSOFF: Mainly the cash receipts and disbursements, your Honor, but I didn't want to disturb that folder.

THE COURT: I don't blame you for not wanting to disturb the folder. That doesn't mean you have to offer everything willy-nilly into the record. I am going to sustain the objection without prejudice to you at some later time at the next recess to make an offer of proof if you care to.

I see nothing in there that has anything to do with our case at all. As I say, I will allow you to do this. Have you got anything else you want to ask Mr. Ekert?

MR. MUSOFF: Yes, I do.

THE COURT: Why don't you proceed with whatever else you want to ask Mr. Ekert and when you get to the point where you are completed, except for this subject, let me know and we will take a short recess and consider it.

MR. MUSOFF: Thank you.

Q Mr. Ekert, I now show you a document marked as Defendant's Exhibit C for identification. Would you please inspect that document and tell us what it is?

A It is the annual report of Yankee Plastics, Inc. as submitted to the shareholders of the company. That is for the year ended 1/31/69.

Q Was that record prepared in the ordinary course of business?

A Yes, it was.

Q Was it the ordinary course of business to prepare and keep such a record?

A Yes.

MR. MUSOFF: Your Honor, I offer Defendant's Exhibit C in evidence.

MR. BUSH: I am going to enter an objection again on the grounds of relevancy. This is for the period, as I understand it, ending January 31, 1969 for the parent company.

THE COURT: Again, Mr. Musoff, I have to assume there must be some particular portion of this annual report that you consider relevant and it might help matters if you will show Mr. Bush quietly what that is and I suggest to you, Mr. Bush, that you might be well advised to look at it and then I will hear you again.

MR. BUSH: Same objection, your Honor.

MR. MUSOFF: Your Honor, I am going to be confronted with this with each and every --

THE COURT: May I see the document, please.

MR. MUSOFF: Yes, sir.

THE COURT: Is there one particular entry or entries here, Mr. Musoff?

MR. MUSOFF: Yes, there are, your Honor. One of the entries under the asset column and note 4 to that statement.

THE COURT: All right. From what I see I agree with the objecting party, the government. I am going to sustain the objection to this on the grounds of relevance without prejudice to your right to make an offer of proof on this after you finish on anything else you want to get from this witness.

BY MR. MUSOFF:

Q Mr. Ekert, I now show you Defendant's Exhibit O for identification. Would you please inspect it and tell us what it is?

THE COURT: You call this Defendant's Exhibit O?

MR. MUSOFF: Yes. Your Honor, I have skipped to O because the intervening exhibits --

THE COURT: That is all right. I wasn't sure I heard you. I am not criticizing you.

A These are the books of original entry for Mr. Hanger for 1966. That would include the cash receipts, disbursements and whatever other journals we would keep.

Q Was that record prepared in the ordinary course of business?

A Yes.

Q Was it the ordinary course of business to prepare and keep such a record?

A Yes.

MR. MUSOFF: Your Honor, I offer Defendant's Exhibit O for identification in evidence.

THE COURT: Forgive me, gentlemen, but once again, I pray you to think about what is going on here and to realize that there must be some specific page or entries. I can't conceive that all of the entries in the books and journals of Mr. Hanger are what you are wanting to bring to our attention. There must be something specific, in other words.

MR. MUSOFF: Your Honor, may I approach the bench at this point?

THE COURT: Sir, this is not an untypical or irrational request on my part and I beg you to be patient with me because I know whereof I speak and it does nothing to prejudice you. You listen to me.

There must be -- I repeat -- one or two or whatever but something specific. You don't want to just dump all the books in here willy-nilly just for the pleasure of it, I am sure.

MR. MUSOFF: No, your Honor. I don't want to dump the record in willy-nilly.

THE COURT: Would you mind then showing what you have in mind to government counsel so that the issue is sharpened and we know where we are going? You show Mr. Bush what it is you really want to offer here.

MR. MUSOFF: Yes, sir.

(Pause.)

MR. BUSH: I have heard the explanation, your Honor, and I am not sure that there has been a proper foundation for the admission of the exhibit. On that basis I am going to continue to object until such a foundation has been laid.

THE COURT: Would you mind either putting a paper clip or in some other way designating, so I can understand this in whole or in part, Mr. Musoff?

MR. BUSH: May I also make just one inquiry on voir dire?

THE COURT: One thing at a time. May I be shown this thing so that we can move along here?

MR. MUSOFF: If your Honor please, I think we could save the court's time if I approach the bench and make an offer of proof with regard to all of the exhibits I intend to offer at this time.

THE COURT: You may be right, but since I don't know what otherwise --

MR. MUSOFF: Piecemeal it will be quite difficult to understand the thrust of what I am attempting to get across.

THE COURT: You may be right, but for the moment I am still trying to find what is in this --

MR. MUSOFF: The cash disbursements, your Honor,

all of the cash disbursements in that book, which covers the first half of the calendar year 1966.

THE COURT: Mr. Bush, getting back to your latest request, what was that again you want? You want to ask Mr. Ekert something on voir dire?

MR. BUSH: I just want to establish one fact on voir dire, which is unclear in my own mind. But, as I say, my objection, I think, will be the same.

VOIR DIRE EXAMINATION

BY MR. BUSH:

Q Mr. Ekert, you testified that these were the books and records or part of the books and records for Mr. Hanger for 1966. By that do you mean the fiscal period ending January 31, 1966?

A 1/31/67.

MR. BUSH: I see. I am going to object on the ground that an improper foundation has been laid for the admissibility of the documents.

THE COURT: I am not sure I understand you at all on that point. But what I am concerned about is that I cannot see the relevance of most if not all of the so-called cash disbursements which appear in these books of original entry.

Do I understand, Mr. Musoff, that you have a whole

host of various corporate financial records which you purport to offer here? Is that what you are trying to say?

MR. MUSOFF: I would characterize it this way: The corporate records would consist of the cash disbursements, the general ledger, and the petty cash records covering the entire calendar year of 1966.

In addition, there are other corporate records consisting of Forms 10 and 10-k, which were submitted to the Securities and Exchange Commission in Washington, and certain annual reports of the corporation, which I believe reflect material which is extremely relevant and pertinent to this case. If I may be permitted to approach the bench and explain myself, it would be clearer.

THE COURT: I think, since so far I can see no possible relevance whatsoever, but since you are entitled to be heard on that, what I am going to do is to ask the jury to take a brief recess so it can be comfortable while we go into this.

We will call you back as soon as we can, ladies and gentlemen.

(The jury left the courtroom.)

THE COURT: What is your explanation of all of this?

MR. MUSOFF: Your Honor, perhaps let me take one batch of records at a time.

With respect to the annual reports of the corporation that were sent to stockholders and the Form 10 which went to the Securities and Exchange Commission, and the various forms 10-kwhich also went there, these reflect quite clearly that, first of all, Mr. Hanger had a wholly owned subsidiary known as Intercontinental Hangers; that Intercontinental Hangers had loaned substantial amounts of money to its officers; and that as a matter of fact those loans constituted the major asset of the Intercontinental Hangers.

THE COURT: Just a minute. Let me stop you right there. If this is what you want to prove, I must submit that I have never seen quite anything like this, because no one, I submit, would ever understand you, mainly because, as I have been trying to pointedly tell you for the last 20 minutes, you just don't dump in a whole set of books and records willy-nilly and expect to impress anybody as to what you are talking about.

We have so far on the agenda the records of Utility Molding. What this has to do with your argument I cannot see. Second, we have the annual report of Yankee Plastics. Third, we have the 1966 books of original entry of Mr. Hanger.

MR. MUSOFF: May I take them one at a time, your Honor?

THE COURT: What I am trying to say, Mr. Musoff,

is that, though it is already demonstrable that this has been not the best-tried tax case in the world, we have been going swimmingly, compared to this procedure. You have got to delineate for your adversary and for the court what you are doing here; otherwise you cannot expect to impress anybody.

MR. MUSOFF: All right, your Honor.

THE COURT: How in the world the records of Utility Molding for 1968 have anything to do with the point you are arguing I cannot conceive.

MR. MUSOFF: I was not arguing that point with regard to the records of --

THE COURT: It was your opening offer.

MR. MUSOFF: My opening offer was addressed to something else, your Honor. On page 164 of the transcript Richard Bertoli on recross gave an accounting of funds in which he states that Mr. Rosen utilized to his personal benefit funds that were deposited in Utility Molding. He said that $4,000 was paid to Martin Goldman, $1800 was paid for moving expenses. And if you go on, your Honor, to --

THE COURT: Wait a minute, Mr. Musoff. I see what you mean. I have the transcript here.

MR. MUSOFF: Well, your Honor --

THE COURT: Just a minute, will you? I have never

heard anybody quite like you in one of these trials.

In other words, even though this came out on re-cross examination, you want to demonstrate that this is not so, through the records of Utility Molding.

MR. MUSOFF: That is correct, your Honor.

THE COURT: Then I think you ought to show first government counsel and this court what you are referring to in Defendant's exhibit B. Just dumping in the records willy-nilly is not the way to do it. It is the easiest thing in the world to dump records all over the building, but it does not help anybody in any way, least of all you.

MR. MUSOFF: Your Honor, I apologize for that. I don't intend to dump the records. What I intend to do was to have these identified and then have the witness run through this to show that the only amount that was received by Mr. Rosen was $6,870, which was charged to his loan account, and that there were no other checks drawn for his benefit, and that he did not receive $18,000 or moving expenses or anything else.

THE COURT: Fine.

MR. MUSOFF: That is why I wanted these records in, your Honor.

THE COURT: If you could have only told your adversary and the judge about this, we might not have been

in this posture.

MR. MUSOFF: I did tell my adversary.

THE COURT: That takes care of Utility Molding for the moment.

What about the annual report of Yankee Plastics?

MR. MUSOFF: The annual report of Yankee Plastics, your Honor, that was sent to the stockholders clearly reflects an entry under the asset column, "Investment In and Advances To Wholly Owned Subsidiary Not Consolidated, see Note 4."

When you turn to note 4, your Honor, it indicates that Intercontinental Hangers was a wholly owned Canadian subsidiary, and it states very explicitly that the principal asset of the subsidiary company consisted of loans to officers and employees of the parent company, amounting to $36,648, which represented 58 percent, more than half, the subsidiary's asset.

The government's contention is that these payments from Intercontinental Hanger to Mr. Rosen were done in some sort of surreptitious manner.

THE COURT: Hold on. First of all, the argument about the loans you can already argue on better evidence, to wit, do you remember those Canadian gentlemen who came in here from that firm in Montreal?

MR. MUSOFF: Yes.

THE COURT: We all know the story about the loan. That is already in the record.

MR. MUSOFF: That is true, your Honor, but I think it important that the jury understand that also the federal government was apprised of this in the Forms 10 and 10-k.

THE COURT: Wait a minute. Wait a minute, please, one thing at a time, Mr. Musoff. You already decided this case, I know that, but that is not what we are doing here.

I will not receive defendant's exhibit C, the annual report of Yankee Plastics. That is just a red herring more than anything else.

MR. BUSH: Before you make up your mind on Defendant's exhibit B, could I be heard briefly?

THE COURT: I have not made up my mind and I am not going to make up my mind until I hear you again.

But let us go back. My main trouble is to understand what is going on here. Now we come to Defendant's exhibit O for identification, the books and records of original entry for the year ending January 31, 1967, of Mr. Hanger. There are a lot of cash disbursements shown in those books.

MR. MUSOFF: Your Honor, what I intend doing, in addition to that, is introducing the other exhibits which consist of the general ledger for that year, the cash dis-

bursements, and the petty cash, to show the total amount of funds that came out of Mr. Hanger to Mr. Rosen. My expert's testimony will be based upon his analysis of those records and what he found, and his schedules will be based on those underlying records.

THE COURT: Fine. But what in the world does it have to do with these charges on trial? The government does not charge that your client got any monies out of Mr. Hanger as such.

MR. MUSOFF: That is correct.

THE COURT: Correct, Mr. Bush?

MR. BUSH: That is correct, your Honor.

MR. MUSOFF: However --

THE COURT: However what?

MR. MUSOFF: However, appended to the Defendant's 1966 income tax return is an accounting for $7800 received in addition to his wages for travel and entertainment expenses. Although the form 1099 is made out in the name of Mr. Hanger, it is our contention that that $7800 includes whatever monies he received from Progressive Drug. Because when you total up the entire amount --

THE COURT: Wait just a minute. How would the books and records that you are now claiming you want to offer ever prove such a thing at all?

MR. MUSOFF: Because if the total payments received by Mr. Rosen from Mr. Hanger from all sources reflected on those records amounts to less than $15,600, which is the salary, plus the $7800 in expenses, then it had to come from somewhere, and our contention is that proper reference is that the only other place he received the money for that type of expenditure was Progessive Drug. I think it is a fair inference.

THE COURT: And if it is a fair inference, what does it do? Because it does not get at the government's contention at all.

MR. MUSOFF: Your Honor, it indicates that he accounted for all monies he received during the year. And if he expended that money --

THE COURT: This sounds like one of the more elaborate versions of the shell game, Mr. Musoff. I cannot buy that at all. From your own point of view that is absurd. That is a reductio ad absurdum, as a matter of fact. I cannot imagine that anyone would want to make that kind of argument. That just is astonishing.

No, I am sorry, you are going to have to come up with something better than that, because this is not what this man is accused of at all. This man is accused of getting payments which were income and not loans. They have nothing

to do, nobody claims that these payments came from Mr. Hanger. Quite to the contrary.

MR. MUSOFF: But, your Honor, if he included those in the return on that schedule and he expended it for bona-fide travel and entertainment expenses, then there are no tax consequences to him.

THE COURT: How would that show up on Mr. Hanger's books? I just cannot assume such a thing, unless these are crooked books. You don't mean that.

MR. MUSOFF: Your Honor, they are not crooked books.

THE COURT: Of course you don't mean that.

MR. MUSOFF: What I am saying is that this return for 1966 was prepared by Mr. Bertoli --

THE COURT: Mr.Musoff, I don't want to wrangle with you. All I am saying is that your offer of proof of all these propositions through the books and records of Mr. Hanger to me on its face is an absurdity, because that is not what this indictment charges your client with at all. None of these payments are alleged to come from Mr. Hanger. Therefore, it seems to me to be a little absurd to be bamboozling this jury with a lot of red herrings thrown all over the place about something that we know on the face of it could not have anything to do with our case.

MR. MUSOFF: Your Honor, it is not my intention,

I am sure, to bamboozle the jury.

THE COURT: I am sure it is not either, but don't you see what I am trying to say? On the face of it, it is an absurdity. It is raising an issue that the government does not raise.

MR. MUSOFF: Your Honor, I respectfully disagree with that.

THE COURT: In any event --

MR. MUSOFF: Your Honor, may I just go one step further without belaboring it?

THE COURT: May I suggest that what you do now is that you make your record as clear as possible as to whatever else it is that you wish to offer on this line through this witness, and let us get it identified so we know as exactly as we can.

BY MR. MUSOFF:

Q Mr. Ekert, I show you Defendant's exhibit D marked for identification. Would you please tell us what that is?

A Yes. It is the Form 10 filed with the SEC in Washington. It is a matter of public record. Included in this --

THE COURT: For what company?

THE WITNESS: This would be for Yankee Plastic, which is now known as Mr. Hanger, Inc., and all of its sub-

sidiaries. The statements included in here are consolidated and then the individual statements.

THE COURT: What year?

THE WITNESS: Of each company.

THE COURT: What year?

THE WITNESS: 1/31/69.

THE COURT: 1/30/1969?

THE WITNESS: 1/31/1969.

THE COURT: Yes.

MR. BUSH: What was the exhibit number on this, again?

MR. MUSOFF: D.

THE WITNESS: D.

THE COURT: All right, what is next?

No, no, I don't want any lectures about what a Form 10 is.

MR. MUSOFF: No, I was not going to do that.

THE WITNESS: You want to know --

THE COURT: I said what is next? Please, Mr. Musoff. The next exhibit.

MR. MUSOFF: My next exhibit is marked Defendant's exhibit E.

THE COURT: All right.

BY MR. MUSOFF:

Q Mr. Ekert, would you please inspect that and tell us what it is.

A It's the annual report of Yankee Plastics, Inc., for the year ended 1/31/70, as issued to the board of directors and shareholders of the company.

THE COURT: That is year ending --.

THE WITNESS: 1/31/70.

THE COURT: What is next?

Q Mr. Ekert, I now show you Defendant's Exhibit F for identification.

A Form 10K of Yankee Plastics, Inc. and subsidiaries for the fiscal year ended 1/31/70 as filed with the SEC in Washington, and a matter of public record.

Q I now show you Defendant's Exhibit G for identification.

THE COURT: That is the year ending January 31, '70?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

A This is the annual report issued to the shareholders of Mr. Hanger, Inc. formerly Yankee Plastics, Inc. and subsidiaries for the fiscal year ended 1/31/71.

THE COURT: All right, that's good for identification.

Q I now show you Defendant's Exhibit H for identification.

A Form 10K of Mr. Hanger, Inc. formerly Yankee Plastics, Inc. for the fiscal year ended 1/31/71.

Q I now show you Defendant's Exhibit I for identification.

A Form 10K of Mr. Hanger, Inc. for the fiscal year ended January 31, '72. All the statements are on a consolidated basis.

Q I show you Defendant's Exhibit B for identification --

THE COURT: Wait a minute.

MR. MUSOFF: P, I'm sorry.

THE COURT: Is it P?

MR. MUSOFF: Yes.

THE COURT: We are jumping from I to P, all right.

A This is the purchase and disbursement journal of LLDD Corporation, formerly Mr. Hanger, Inc. from the period --

THE COURT: Run that by again.

THE WITNESS: LLDD Corporation formerly Mr. Hanger, Inc. for the period July 1, 1966 through 3/15/68.

MR. MUSOFF: I have several more exhibits, your Honor.

MR. BUSH: Might I get the dates on the last item?

THE WITNESS: July 1, '66 to March 15, '68.

MR. BUSH: I see. Thank you.

THE COURT: What is next, Mr. Musoff?

Q I now show you Defendant's Exhibit Q for identification.

A This is the general ledger of Mr. Hanger, Inc., January 1, '66 through January 31, '67.

Q I now show you Defendant's Exhibit R for identification.

A These are the petty cash slips of Mr. Hanger, Inc. for the year, the calendar year, 1966.

Q I now show you Defendant's Exhibit S marked for identification.

A These are the cancelled payroll checks of Mr. Hanger, Inc., I guess this would be for the calendar year 1966. Yes.

MR. MUSOFF: That is it as far as this witness is concerned, your Honor.

THE COURT: May I ask what Exhibit P, the purchase and disbursement journal of LLDD --

MR. MUSOFF: It is one bound book.

THE COURT: Mr. Musoff, I don't blame you for offering books but what I am trying to find out is what is the part of it that you want to get in this case? I am not blaming you for not tearing up a book. Of course you don't want to do that.

MR. MUSOFF: Only the part that affects the disbursements.

THE COURT: What has that got to do with our case?

I don't understand you.

MR. MUSOFF: Again, your Honor, since we don't know how the $7800 was arrived at, the only way we can show that Mr. Rosen did not receive $7800 in addition to his salary from Mr. Hanger is to examine all of the disbursements of that corporation. If we come up with a lesser figure then I think we can make the inference that included in that $7800 amount on the return are the payments received from Progressive Drug.

THE COURT: Look, that to me is, as I told you, one of the wildest inference possibilities I ever heard of in my life. I don't see how you are going to prove it by the disbursement journals. Again, I remind you what this case is about. It isn't about that at all. The government has put in evidence to the effect that -- look, Mr. Witness, would you mind stop waiving your hand. I am not talking just to edify you or anything else. I am trying to make a serious point and I wish you would be polite enough not to interfere.

MR. MUSOFF: I'm sorry, Judge.

THE COURT: If you claim that that $7800 attached on that rider included any of these figures, there is a way possibly you could prove that but not this way. One way, for example, is to get the fellow who prepared that

return to come in here and say that that is what happened. Another way would be to get Rosen to say that is what happened, if in fact it happened. But to dump in the court a whole series of purchase and disbursement entries isn't going to prove that at all.

MR. MUSOFF: If your Honor please, Mr. Bertoli who did prepare the returns says it didn't happen that way. But the records refute it. He says that this man received $7800 from Mr. Hanger in addition to his salary. The records don't show that. Isn't it proper then under those circumstances to bring --

THE COURT: Bertoli was here. I grant, he wasn't your witness, but a dumping operation isn't going to help us at all.

I understand you can ask Bertoli about these things. If you claim he was the controller then, right?

MR. MUSOFF: That is correct.

THE COURT: There is no doubt about that, is there?

MR. MUSOFF: No.

THE COURT: Then I don't know why you didn't show him these records which were under his domain. Mr. Ekert wasn't there then. I grant you Mr. Ekert could probably identify these as books and records kept in the usual course

I don't dispute that. But if all of this is so, as you claim it is, Bertoli was the guy to confront with this.

MR. MUSOFF: Your Honor, may I just point out one other thing?

THE COURT: I am having such trouble with this. There are vast quantities of records here which are unshaped, unexplained. Now we come to the general ledger, Defendant's Exhibit Q, which apparently covers calendar year '66 and January of 1967 too, is that right, Mr. Ekert?

THE WITNESS: I'm sorry, your Honor. I have to look at it again.

THE COURT: I don't blame you. It is the general ledger, I thought you said, of --

THE WITNESS: This is from January 1, 1966 through January 31, '67. They added in the first month into this book.

THE COURT: Again, Mr. Musoff --

MR. MUSOFF: Only 1966, your Honor, is what we would be interested in.

THE COURT: Fine. I am not so interested in the dates as I am what particular information. That book is as thick as my middle. Come on. You don't seem to get this at all. You have no right to fail to understand me about this. I am entitled to know what is going on and so is the

jury. What portions of this do you claim are relevant?

MR. MUSOFF: The entire record to show all of the payments and where they were charged to so that you could cull out from that what went to Mr. Rosen.

THE COURT: Look, it seems to me that we are just going down the road for nothing more than an attempt to obfuscate the issues in this case.

MR. MUSOFF: Our expert, your Honor, will testify that he went through each of these records and he is going to come up with findings as a result of his inspection.

THE COURT: That is another problem. You are trying to offer these books and records in now willy-nilly without reservation.

MR. MUSOFF: Your Honor, as far as these books and records are concerned should I put the expert on and then say what records did you examine and then have them identified?

THE COURT: That might be something else but that is why I have been totally puzzled. We have lost a whole hour by your confusing presentation. I don't know what is going on here.

MR. MUSOFF: I wanted to identify these records as being bona fide records.

THE COURT: You offered them in evidence. What is what I call a dumping operation. I didn't know what your

expert was going to say. You didn't tell me and you don't have to. I don't know what you are going to do in this case. You bring in Mr. Ekert and you say "Judge, we offer these."

MR. MUSOFF: He is the only one at the present time --

THE COURT: I think I am beginning to see the light. All you wanted to do, quite properly, was to get somebody to authenticate the books and records?

MR. MUSOFF: That is correct.

THE COURT: Then I wouldn't bother to offer them. I would get them authenticated so Mr. Bush can't argue they are not the books and records, i.e., they are not common.

Let me go back. Apparently you do wish to offer, through Mr. Ekert, however, some portions of the records of the Utility Holding Company for 1963?

MR. MUSOFF: That is correct.

THE COURT: B for identification. Apparently you wish to offer this solely on the issue of the credibility of Mr. Bertoli.

MR. MUSOFF: That is correct, your Honor.

THE COURT: Mr. Bush, take a look at Exhibit B. Whatever it is he wants to offer, that portion thereof, now

that you and I understand this maybe you might not object.

(Pause.)

MR. BUSH: I have an objection on two grounds, your Honor. First my objection is that this, at best, is very remote and entirely collateral. I cannot see that it should be independently put in on this basis. They apparently laid the groundwork for this on cross examination.

Secondly, I object on the basis that the books and records really don't say anything in and of themselves. They have laid no foundation for them. There are some names listed here, the meaning of which I don't know. I don't see where the 36,000 came in or where it went out. They tell me 36,000 came in as part of a larger sum of money but it is nowhere reflected here and the records are entirely meaningless.

I don't even think they pertain to the issue for which they desire to introduce them.

THE COURT: In regard to the last, perhaps you are right, but that is beyond my competence to understand. I think the first part of your point though is what troubles me. Standing alone these records are inconclusive, ambiguous and may indeed have no relevance even on the limited basis which Mr. Musoff suggests.

I don't know whether Mr. Ekert can explain that.

Maybe he can, I don't know. But I don't see how he could because he wasn't there then.

You tell me, Mr. Musoff.

MR. MUSOFF: As the chief accounting officer and financial officer of the company he can interpret these records and he can testify, your Honor, that the only disbursement to Mr. Lawrence Rosen out of Utility Molding during '67 was a check in the amount of $6,870 which was reflected as a loan to him. That no additional funds from Utility Molding during that period were disbursed to Mr. Lawrence Rosen, neither the $4,000 that Mr. Bertoli attributed to Mr. Rosen as having gone to Mr. Goldman or $1800 in moving expenses.

THE COURT: But, you see, again, there is another problem. Right on the very page you point out there is the answer which he gave, the reason why it was put into Utility Molding was that half of that money was supposed to go to Joe Abrams and he felt Joe Abrams would complain if the money was deposited into Utility Molding. I can't believe that Mr. Ekert is going to be able to explain all of that.

Unless he was there contemporaneously --

MR. MUSOFF: He wasn't there, your Honor.

THE COURT: Again, I don't understand why you didn't put this to Bertoli. He was the man who was there

then.

MR. BUSH: There really is an improper foundation as well in the sense that they did not lay a foundation for impeaching Mr. Bertoli on this by referring him to any particular statement -- a similar situation that we were confronted with with Mr. Zuckerman yesterday.

THE COURT: In any event, gentlemen, I am not going to receive Defendant's Exhibit B. However, if you do recall Mr. Bertoli for the other reason you had in mind, you remember that, Mr. Hoey, why, certainly you would have the right, as I see it, to inquire of him with respect to the contents of Defendant's B for identification.

At the present time I will not receive any of these other proferred exhibits without prejudice, however, to re-offer at any later date here with another witness if it becomes clear then that these documents are relevant.

Do you have any other questions under these rulings of Mr. Ekert?

MR. MUSOFF: No, your Honor.

THE COURT: I take it you don't want to cross examine him?

MR. BUSH: No, I don't, your Honor. I might just suggest that it seems to me, as I listen to Mr. Musoff, any further testimony I am going to object to as well.

THE COURT: I don't think that will come as a surprise to Mr. Musoff and to Mr. Hoey.

MR. BUSH: I am sure it won't but I wonder if we are going through with a futile gesture --

THE COURT: I don't know what the defense is going to do next. That is left up to them, in the first instance at least. I can only say that we have to give Mr. Musoff a chance. Whatever he is going to do, he is going to do; and if you want to object, you are going to object. Just as surely as you two are going to do those things, I am going to rule.

Thank you, Mr. Ekert, you may be excused.

(Witness excused.)

THE COURT: Gentlemen, let's take a five minute recess right now and then we will come back with the jury.

(Recess.)

(In open court - jury present.)

THE COURT: Before we begin, Mr. Musoff, if I can just bring the jury up to date.

Ladies and gentlemen, I think in your absence we have straightened out what our technical problems are at the moment. Suffice it to say now that Mr. Ekert has identified certain records and they have been marked for identification only and the government has indicated that

they don't wish to cross examine Mr. Ekert in his identification of all these records so he has been excused.

We are going to proceed with some other evidence from the defense.

MR. MUSOFF: The defendant calls Mr. Gelfand to the stand.

S I D N E Y G E L F A N D, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUSOFF:

Q What is your occupation?

A I am a Certified Public Accountant specializing in tax matters.

Q What is your occupational background?

A In 1928 my first employment was with Loews, Inc. MGM as a statistical clerk. Later on I became an aid to the controlier and assistant treasurer and subsequently I becmae their tax representative where I remained for 13 years.

MR. BUSH: The government would waive any further qualification of Mr. Gelfand.

MR. MUSOFF: Thank you, Mr. Bush.

Q Have you made an analysis of the books of account

accounting treatment in 1968 of these particular payments to individuals described in the testimony in this trial.

In all other respects I agree with you, and I will strike that testimony.

MR. BUSH: Might the jury be given an appropriate instruction at this time?

THE COURT: The jury has just heard me say that, and I am sure they understand that when the court strikes certain testimony, that means they are not to consider it in their deliberations, and I will repeat that instruction in my general charge, ladies and gentlemen.

MR. BUSH: I have no cross-examination of this witness, your Honor.

THE COURT: Thank you, Mr. Gelfand. You may step down.

(Witness excused.)

THE COURT: Mr. Musoff?

MR. HOEY: Mr. Rosen to the stand, please.

- -

P A U L L A W R E N C E R O S E N R A U C H, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOEY:

Q Mr. Rosenrauch, you are also known by the name Lawrence Rosen?

A Yes, sir.

Q Or Larry Rosen?

A Yes, sir.

Q Are those the names by which you are known in business?

A Yes, sir.

Q For how long a period of time have you been so known by those names?

A Twenty years.

Q Mr. Rosen, will you kindly keep your voice up so all the jurors can hear you.

What is your business or occupation?

A I am a business executive.

Q By whom are you employed?

A By Mr. Hanger, Inc.

Q In what capacity?

A I am the chairman of the board.

Q Are you also the chief executive officer?

A And the chief executive officer.

Q By the way, how old are you, Mr. Rosen?

A I am 47.

Q Are you married?

A Married.

Q Do you have any family?

A Three children.

Q Girls or boys?

A Three girls.

Q How long have you been connected with Mr. Hanger, Inc.?

A Since about 1961, '62.

Q Was it known by another name when you first became connected with it?

A Yes. It was known as Yankee Plastics, Inc.

Q Was Ben Zuckerman connected with that concern at that time?

A Yes, he was.

Q Is he related to you?

A He is my uncle through marriage.

Q That is through your mother's sister?

A My mother's sister.

Q Is he still connected with Mr. Hanger, Inc.?

A Yes, he is.

Q In old Yankee Plastics you went to in 1961, is that correct?

A Approximately.

Q What was the nature of that business?

A At that time they were sellers of used hangers,

clothing hangers. They used to buy and sell second-hand plastic and other kind of hangers.

Q Did there come a time when they got into the manufacture of hangers?

A Yes. I joined Yankee in approximately 1962, and in 1963, approximately sometime in 1963, we were involved in the manufacturing of plastic hangers.

Q Has that business continued and expanded over the course of years?

A Well, in 1962, the year I joined the company, it did about $150,000 business for the year, and last year we did ten and a half million.

Q These are the disposable hangers upon which generally women's garments are sold to the stores; is that what you are talking about?

A Yes. The ones that break all the time.

Q How long did you remain with Yankee Plastics?

A During the course of my first employment with Yankee Plastics I remained from 1962 until the dispute with Jack Zuckerman, who was Ben Zuckerman's brother, in the latter part of 1964. In 1964 there was a dispute between Jack Zuckerman and myself and his brother was -- his brother Ben was in the middle of it, and I decided to leave the company.

Q What was your position with the company at that time?

A I was the president. And I left the company, and so did Ben Zuckerman and other members of the firm at the time.

Q What did you do thereafter?

A Shortly thereafter it was sort of a horrendous thing because it had broken up two brothers that had been close to each other for a period of years, and I was very despondent, and I left New York for a short period of time, and I had been offered a job with an insurance company in Florida, and I was considering it. Ben Zuckerman wanted to go back into the hanger business, as this is what he knew, and he really asked me if I would go along with him and join him in that. I felt very guilty at that time that he left his brother, and I agreed to head up the new company that he was forming.

Q What was the name of that company?

A That was Mr. Hanger, Inc.

Q Had Mr. Bertoli been connected with old Yankee Plastics?

A No. I had met Mr. Bartoli in the old Yankee Plastic sometime in 1963, I believe, through Mr. Abrams. He had been an accountant for Mr. Abrams. He came up for a short period

of time to attempt to do some financing. It didn't work out, but I had first met him through that.

Q Did you become friendly with him during the time you were with Yankee Plastics?

A Yes. He was a young personable fellow and we had a good rapport together.

When I agreed to go back to Yankee Plastics in 19 sixty --

Q No, no.

A Pardon me. When I agreed to go with Ben in Mr. Hanger in 1964, one of the problems was financing. I ran into Mr.Bertoli accidentally, and he was not doing very much. He had recently sold his interest in the electronic company or the electronic company had gone out of business, and he had been in a real estate venture, and the real estate venture had ended --

MR. BUSH: I am going to have to object to all this unsolicited background information about Mr. Bertoli.

THE COURT: Let us go back. Mr. Rosenrauch, I am frank to say I don't understand you. You told us that in late 1964, because of this dispute with Jack Zuckerman, that you left, Ben left with you, then Ben persuaded you to go back, and I thought you said into a company called Mishler Plastics, but I must have been wrong.

THE WITNESS: No. Mr. Hanger.

THE COURT: So that in the same year 1964 you went back, and this time it is called Mr. Hanger.

THE WITNESS: Yes. It was about four months later, I believe it was just about the new year.

THE COURT: All right.

MR. HOEY: Excuse me, your Honor.

Q Was Mr. Hanger an entirely new venture that you were starting up?

A Yes, a brand new venture, and it started in, I believe, Christmas of 1964.

Q Did Richard Bertoli join that organization with you and Ben Zuckerman at the time?

A Yes. They were just the three of us. It was Richard Bertoli, Ben Zuckerman and myself. We started the company.

Q What was the nature of the business of Mr. Hanger?

A Mr. Hanger was organized to design, patent and manufacture disposable plastic hanger products.

Q In other words, you were going into competition with Yankee Plastic, Ben Zuckerman, with which you had been previously connected, is that correct?

A That is correct.

MR. HOEY: May I stay on this for chronological time?

THE COURT: Yes.

Q Did Mr. Hanger continue to do business under the name of Mr. Hanger manufacturing plastic and selling plastic hangers?

A Yes, from the time it was organized until March 15, 1968.

Q These are sold generally to the textile trade?

A To the apparel industry.

Q March 15, 1968, what happened on that date?

A The company was then merged into Yankee Plastics and Yankee Plastics had the right to use the name Mr. Hanger because at that time they had a better trade name in the marketplace. We were doing much better business than Yankee.

Q In other words, your company, Mr. Hanger, got merged or acquired for its assets by Yankee Plastics, is that correct?

A Yes, sir.

Q That merger was completed on March 15, 1968?

A That is correct.

Q Did the merged company operate under the name of Yankee Plastics?

A For a short period, yes.

Q Thereafter was the name changed?

A Yes, it was changed to Mr. Hanger.

Q Is that the name of the company which is presently in existence?

A Yes, sir.

Q Let us go back now to 1965, if we may. You have now started up the new company with Ben Zuckerman and Bertoli is now employed there, is that correct?

A That is correct.

Q In what capacity was he employed there?

A He was the controller of the company.

Q Would it be safe to say at this point that you, Zuckerman and Bertoli were the three principals of this company?

A That is correct.

Q You were each officers of the company?

A Yes, we were.

Q Did you have any stock interest in the company at that time?

A No, I did not.

Q When did you first start to manufacture plastic hangers?

A In about March, 1965, March or April. March, April, May or June, over a two or three-month period of time.

Q Was business good or bad at that point?

A Well, we were starting a business. It was fair.

Q Did there come a time during 1965 when you met either Lawrence Press or Henry Hainick?

A Yes.

Q What part of the year did you meet them?

A I met them in early 1965.

Q Can we focus our attention to Progressive Drug at this point.

A Yes.

Q Did you have anything to do with the taking over of Progressive Drug by Pawnee Drug?

A I arranged for the financing for Pawnee to acquire the stock of Progressive Drug Company.

Q Was that done through Commercial Trading Corporation?

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A Yes.

Q Company, Inc.?

A Yes.

Q Was that done through Mr. Karl Grossman who testified here yesterday?

A Yes, he put up about a million and a half dollars.

Q Prior to bringing Commercial Trading in to do the financing for Progressive Drug had any efforts been made by either Ben Zuckerman or you to secure any other financing for this purchase of the Progressive Drug stock?

A I didn't understand that, Mr. Hoey.

Q Had any efforts been made by either Bertoli or Zuckerman to get financing for the purchase of Progressive Drug?

A Bertoli had attempted to and I don't believe Ben Zuckerman did.

Q Was it after Bertoli's efforts had been unsuccessful that you were able to get the financing through?

A Yes, sir.

Q Now, Mr. Rosen, during this time were you acting as an individual or as an employee of Mr. Manger?

A At the beginning I was acting as a friend of Joe Abrams and attempting to -- he had put up or his family had put up $30,000 as a deposit that they had given to Mr.

Hainick and Mr. Hainick, Mr. Press and Mr. Bertoli hadn't been able to get financing and their contract was going to expire. I think they had a week or two weeks left in their contract at which timethey would lose the deposit. Mr. Abrams came to see me and he was really beside himself. He said, "Larry, you have to try to help me because these people are not in the position to do the financing they promised to get me. I stand to lose $30,000."

I felt very beholding to Mr. Abrams at that time because he helped and had gone to his friends and to his children's estates and to his children's trusts and had invested money in Mr. Manger and it was as a result of his investments in Mr. Manger directly and indirectly through his friends that I was earning a living and at that time I was desperate to earn a living.

I had lost my source of income from the previous Yankee Plastics and I was very heavily in debt. And I couldn't do anything but do the best I could for Mr. Abrams. I went -- not only to Karl Grossman -- to another firm called J.P. McGuire, who are in the commercial finance business, and I had a commitment from the McGuire people for financing.

Near the end they had given us a written commitment and as it got very, very close to the closing they had gotten a report on the background of Mr. Hainick and

Mr. Press -- a business report -- that they didn't consider too favorable, and they withdrew their agreement that they would not complete the transaction.

We only had a matter of days left. I then went to Commercial Trading and I told Commercial Trading the full picture, that J. P. McGuire had agreed to the financing and the only reason they were withdrawing from the financing at that late moment was because of the individuals, Mr. Hainick and Mr. Press.

Mr. Karl Grossman didn't care about the individuals. He felt secure in making the loan and he went ahead and he closed the loan. At that time he was also financing us at Mr. Hanger and at Mr. Hanger, which was my life's blood, I was very, very careful to preserve as good and as honest a picture with Progressive because it could affect everyone's livelihood at Mr. Hanger. And he went along and I agreed to meet with him and keep him apprised on a weekly basis of the activities of Progressive Drug Company.

Q Mr. Rosen, for the services which you rendered to secure the financing of Progressive Drug, did you receive any remuneration?

A No, sir, I did not receive a penny.

Q Did you receive any stock?

A No, sir, I did not receive one single share of stock.

Q Did Mr. Hanger, Inc. receive any stock for your efforts?

A Yes, it did.

Q What stock did they receive?

A It appeared to me that I was going to have to spend a considerable amount of time at Progressive Drug. I went to Ben and I said "Ben" --

Q Ben Zuckerman?

A Yes. "I don't know how good this is going to be, it is a sizeable company, it was doing somewhere around nine, ten million dollars a year. If Press can turn it around from a marketing point of view there is a chance to make a lot of money."

My time may be required. I am getting paid by Hanger. He says, "As far as I am concerned you can spend all the time that you want up at Progressive Drug. It is the same family and it makes no difference."

And I said "Fine, then anything that I earn will be the property of Mr. Hanger."

Q Did you secure or did Mr. Hanger or anybody secure any stock in any company as a result of your efforts to secure financing for Progressive Drug?

A Yes, sir. Mr. Bertoli had attempted to get financing for Progressive. He had failed. He was also an employee of Mr. Manger. There was a problem of an ego. One of the problems I had had over a period of years with Mr. Bertoli was the problem of competition. In most cases, in a healthy way. It was on my behalf that Mr. Bertoli was given ten thousand shares of stock.

Q Of what?

A Of the company that bought control of Progressive Drug Company, which was 20th Century Industries. And I was happy for him that he got it and it was because of me and no one else.

Q Did you get any stock in 20th Century Industries?

A The shares of stock that we received were 40,000 shares of stock. The 40,000 shares of stock were put into the name of Ben Zuckerman for the account of Mr. Manger, Inc. When the shares of stock eventually were sold the proceeds went into Mr. Manger, as I understand, the subsidiary technically Utility Holding. And I received nothing from it at any time other than expense money.

Q Let me just stay with this one thought.

A There are others that received stock too. Mr. Press received stock and Mr. Hainick received stock, and I believe that the estate of Abrams -- I am unclear on that

because Mr. Hainick had a much larger relationship with Mr. Abrams than I ever had. So he acted as a representative of Abrams, in a sense.

Q You say that the stock was issued in the name of Ben Zuckerman for the benefit of Mr. Hanger, Inc.?

A Yes, sir.

Q How many shares of 20th Century, if you remember?

A I believe 40,000 shares.

Q Did there come a time when 20th Century disposed of its interest in Progressive Drug?

A Yes, sir.

Q When was that?

A I believe it was about a year and a half later, sometime in 1967.

Q At that time what happened to the 40,000 shares of stock which was in the name of Ben Zuckerman for the benefit of Mr. Hanger?

A I negotiated -- well, technically it was taken back. Technically the shares of 20th Century Industries was bought back by Pawnee. So now Hanger had the Pawnee stock. Then the Pawnee stock was sold to a principal who was going to be the new president of Progressive.

Q Was that Sanford Burns?

A Yes.

Q What did Ben Zuckerman, as the nominee or the person holding the stock for Mr. Hanger, receive for this stock?

A I believe it was $36,000.

Q Is that the $36,000 that you are talking about that was deposited into the account of either the main account or a subsidiary account of Mr. Hanger, Inc.?

A I never saw the checks, Mr. Hoey. Mr. Zuckerman gave them to Mr. Bertoli and he deposited them. I thought all thetime that they went into Hanger. He mentioned it went to Utility, which is possible. But I had nothing to do with the actual depositing of monies into the account.

Q Did you have anything to do with the keeping of the financial records or any of the records of Mr. Hanger?

A In no way.

Q Up to the present time do you?

A No, sir, in no way.

Q By the way, along that line: Did you, at any time, tell Mr. Bertoli that $18,000 of that belonged to you and that $18,000 of that $36,000 belonged to Mr. Joe Abrams?

A No, sir, that is an out and out lie.

Q Did you, Mr. Rosen, receive $6,000 out of that for your own personal use for the purpose of buying stock?

A Yes, sir. I believe it was from the records, $800.

Q Did you, sir, give a note to Utility Molding for that $6800?

A I did, sir.

Q Did you in subsequent days give a confirmation to the Certified Public Accountants who audited the records of Mr. Manger indicating that you owed them $6800?

A I did that in the year 1967. I did it in 1967, 1968, 1969, 1970, 1971 and 1972.

Q By the way, have you paid it off?

A Yes, sir, I paid it off in September of this year.

Q Of 1973?

A I paid it off in September of 1973.

Q Did you, Mr. Rosen, receive from Utility Molding the sum of $1800 for moving expenses to Connecticut?

A I did not, sir.

Q Did you, sir, give $4,000 of that money to --

MR. BUSH: I am going to object to the histrionics here. I can barely stand or hear the questions coming in the force in which they apparently are.

THE COURT: Perhaps we can forgive Mr. Hoey. He didn't realize how loud he was sounding.

MR. HOEY: I am accustomed to a larger court-room.

THE COURT: I was just going to add that many of us are, quite possibly.

In any case, you were interrupted. Can you pick up and start over again?

(Question read.)

Q -- to Martin Goldman?

A No, sir.

Q Other than the 60-some odd hundred dollars that you have received, did you receive any benefit whatsoever other than that loan from the monies which were paid by Pawnee or by Cordwell or whatever it was for the purchase of that stock?

A No, sir, I never did.

Q And that money has been repaid, is that correct?

A Yes, sir, it has been repaid, every penny.

Q Mr. Rosen, let's go back to 1966.

Do you remember when the closing of title was finalized by which Progressive Drug became part of 20th Century Industries?

A I think it was not exactly March or April, I think of '65.

Q '65 or '66?

A I am not sure of the year.

Q Was it after you started to do business in Mr.

Hanger, Inc?

A Yes. Within a matter of months. And we started to do business in Mr. Hanger in '65.

Q So it would be the latter part of '65?

A Yes.

Q Were you ever an officer or director of Progressive Drug?

A No, sir.

Q Were you ever an officer or director of 20th Century Industries?

A No, I was not.

Q Were you ever an officer or director of Pawnee Drug?

A I don't believe I was.

Q Were you ever an employee of 20th Century, Pawnee or Progressive Drug?

A No, sir.

Q At all times from the time Mr. Hanger was founded up to the times in question you have been employed by Mr. Hanger, Inc., is that correct?

A That is correct.

Q During the year 1966 did you have occasion to visit Progressive Drug?

A Yes, sir, I did.

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Q On more than one occasion?

A Yes, sir, I visited anytime from four to five times a week, running into months on end as problems developed, and lessened my visits to once a week as the problems resolved themselves or changed.

Q Mr. Rosen, did you have any particular expertise that caused you to visit Progressive Drug that often, sir?

A I had a responsibility to Commercial Trading. They were involved at that point somewhere upwards of two million dollars. And the life-blood of Mr. Hanger depended solely on our ability to finance through Commercial Trading. They were earning an awful lot of money from Progressive Drug and I was getting the benefit of this to a great degree in the business activities of Mr. Hanger. This was as a motivating factor for me as any other reason.

I was offered a commission from Commercial Trading for bringing in the account that could have been a very substantial amount of money but I couldn't do that because I was an employee of Mr. Hanger. I don't double-deal. I don't take it from one side and the other side. The amount of money could have ran into more than my salary. But I was hooked into Mr. Hanger and I had to live with the commitment that I had made to Mr. Hanger, which I did do.

So my first consideration was protecting the

interests of Commercial Trading. The second was to try to help in the operations of the company wherever my limited areas of experience could benefit them. I was a salesman. I am a sales-oriented man. The prime purpose for purchasing Progressive Drug, which had been a family-owned company for generations of only moderate success -- as a matter of fact, the arithmatic didn't make it a profitable company during the two or three-year period previous to the purchase.

I think it had losses. But Mr. Hainick and Mr. Press felt that with their ideas, with their modern means that they could turn it into a profitable company. I agreed that if we could get sundry products into the line of Progressive Drug we couuld turn a very, very marginal company into a very, very profitable company.

The major difference being that Progressive Drug represented Lux Soap, Bayer Aspirin, all the well-known names that we know in the drug stores. These people have basically fair-traded products. They allow the distributor only to make a very marginal amount of profit.

You are basically a glorified truckman because they have the name and the reputation.

You take a box of mascara that doesn't have any name on it and you get $3.95 for it in the store, you only

have to pay 30 cents for it. There is no way that the consumer can go down the stree tto the next drug store and say "Give me Louis' mascara" versus Lux Soap. You can go to a supermarket anywhere and know if they are a penny out of line. The whole key to the purchase of Progressive Drug was the marketing of sundry products. That is what I was going to help Press to do.

Q By sundry products you mean other than the established type of pharmaceuticals, is that correct?

A Yes, sir.

Q What did you do in that relationship, Mr. Rosen?

A As we heard here yesterday, I contacted friends that I knew that had possible products that we could sell. We had a number of meetings. Some of them at which I spent money in and some of which I didn't spend money in, and some of which they became part of them introducing me to someone else. Mr. Lee states about Dr. Denton and he manufactures baby pants. We were going to put it into various type of containers on the counters and we had gone into designing on that. The Dr. Denton name is a name famous like in other areas of ladies' apparel. It was a coup to have gotten the name Dr. Denton. It is like Fruit of the Loom. Fruit of the Loom -- the jockey shorts are not made by Fruit of the Loom. They are made by an individual shorts

manufacturer.

This went on and on. I was very diligent to try any way I knew to bring in additional business. That is what I was there for.

Q Let us stick with Mr. Lee. You are referring to Earnest Lee who testified here yesterday?

A Yes, sir.

Q You had a relationship with him over a course of a great many years?

A Yes, sir, 20 years.

Q You mentioned Dr. Denton. Did you have meetings with him and other people, for instance, John Janzten?

A I met with the president and the chairman of the board of Dr. Denton, a man named Mr. Carroll. He owns a group of apparel stores in Chicago. I met with him and his brother on a number of occasions. Sometimes it was in the Waldorf-Astoria in New York and sometimes in Chicago at their office, at the airport and at a hotel in Chicago, at which time I took an airplane there, I ate there, I slept there, I took a taxi there. I came back to the airport, I went home and I had expenses.

Q Did you pay for that?

A Yes, sir. As far as I was concerned I laid it out. I got it back from Progressive as I was getting money

from them.

Q And on those occasions when you entertained and went to Chicago and you had to take taxis and pay for meals, did you get receipts or vouchers or anything for them?

A Some I did and some I didn't.

Q Did you turn in the vouchers to Progressive?

A No, I turned them into Mr. Hanger, some of them. Where it was a credit card I didn't have a credit card on anything from Progressive. I turned it in to Mr. Hanger because I had American Express and Diner's Club from Mr. Hanger and I felt Mr. Hanger was also a beneficiary so I didn't mince words and I knew Ben Zuckerman and I know as far as he was concerned it was the family.

The same people were involved. Not all of the same but enough were the same that I didn't have to pull out $81 that I had paid for -- I didn't have to pull out an $80 or $100 expense that I laid out for Mr. Hanger because it was directly involved or 40 percent involved for Progressive and 55 percent involved for Mr. Hanger. I just lumped it together. Where it fell I felt it could best rest.

It wasn't that important to break down like I was an accountant because I am not an accountant.

Q Did you have other meetings in New York in regard to the Dr. Denton situation and in other places?

A Yes, sir, I must have met 50 times, practically on a bi-weekly basis, with John Janzten who at that time was the owner of John Janzten -- he represented a half a dozen knitting mills and he was very close to the Dr. Denton people. We met constantly.

Q On the occasions when you met with Mr. Janzten did he ever pick up a tab at any of the restaurants?

A Sometimes he did. The majority of the times I did. They were quite substantial because we used to drink in their office in the Empire State Building and there would be -- we would b esitting there for an hour and a half, two hours. He is a pretty good boozer, and a girl would come over and a guy would come over and they would leave and I would wind up with the tab.

Q You were then discussing the Denton situation?

A The Denton situation and whatever he could come up with as an individual product line for Progressive. Larry Press attended three or four of the meetings downtown. Hainick never did.

Q Did anything come out of the Dr. Denton situation whereby it was given to Progressive Drug for distribution?

A After about 9 months it became apparent that there were management skills lacking at Progressive Drug. They had moved to their new plant. They had put in a highly

sophisticated IBM reporting system.

Q You mean a computer system?

A Yes. It wasn't working. They were carrying the IBM system and they had all the manual people at the same time. They were bickering between the management.

Q Who are they?

A Larry Press and Hainick -- there was inter-fighting. Sam Goldman, who was the chairman of the board of 20th Century Industries that controlled Progressive, was very unhappy with the management, and there was internal strife.

There were a lot of different accusations, in my opinion. It was a possibly quickly deteriorating situation, and I so advised Commercial Trading. We had a large meeting at one point and Mr. Goldman agreed to put in an additional $300,000. That is as additional security and based on that the Grossmans advanced another sum of money. Thatmoney was very quickly eaten up and apparently no headway was made.

It appeared to me that it required a considerable amount more. The management there just didn't have it, in my opinion. I so advised Mr. Goldman and I said that it is my opinion that unless you can put in an additional half a million dollars you are going to run into a very, very serious financial problem here. He said he didn't have it

and that he had put in just about everything he did have. I said that in my opinion you better make a very heavy effort to dispose of this company, get your money back or else you are liable to head into a very serious business situation. I so advised the Grossmans. I even mentioned to the Grossmans possibly their taking over the company and providing the additional half a million dollars. They weren't interested in getting involved in any operating companies.

I so advised Mr. Press and Mr. Hainick of Mr. Goldman's feelings. And I instructed Mr. Hainick to endeavor to dispose of the interests of 20th Century Industries because he felt that he was going to be able to make it go and that he knew all the ills, all the problems. And that he would look to get a buyer for the company.

Which is what he did, he went and got a buyer for the company. By the way, at that time, and for six solid months, I had laid out money and received nothing because Sam Goldman wouldn't even pay any expenses in the last six months, regardless of what you laid out.

Q What year are you talking about, 1967?

A That is correct, sir.

Q Go ahead.

A My own money, my own expenses paid by myself and

not returned.

Q May I ask the question again: Did anything come out of the Dr. Denton explorations?

A No, but as a result of all of the problems it was put aside because they didn't have the capital because you had to go into the packaging, into the inventory build-up required to carry that type -- if you handle Lux Soap you can get a delivery every week. One thing you do in that business which is standard policy, you turn your inventory 12 or 15 times. In the average business you turn it over three, four times. Youcan't get delivery every day. Let's say mascara from Hong Kong, you bring it in and have it on your shelf for six months before you dispose of it. You turn your inventory two or three times. That requires a heck of a lot operating capital and they had a shortage.

Q Mr. Rosen, during the time that you were working with Mr. Lee and the Dr. Denton people did you receive any expense money from Progressive Drug?

A Yes, I did.

Q What did you do with it?

A I got checks from time to time and I got cash from time to time. I never reconciled it. It went into my pocket or in the case of a check it may have gone to my wife to deposit it in our bank account and then I may have

drawn a check against it and put the money in my pocket. I believe that I spent more money in expenses than the amount of checks or cash that I ever got from Progressive Drug on total.

Q Did you ever keep any of the monies for yourself?

A No, sir, not other than the expenses. I never used any of those proceeds to go to any of my own personal expenses for my wife or family.

Q Or for any of your own personal expenses?

A Right.

Q Did there come also a time when you worked with one Leon Stern?

A Yes, very similar to Mr. Lee.

Q Was that a deal involving candy and nuts and other things for distribution?

A Yes. Again with Life Saver's --

Q Pardon?

A Again with Life Saver's or with Peppermint Chewing Gum. You are limited, your mark-up is 12, 15 percent. If you can get a bag of cherries and just call it wild cherries you can get it for 40 cents and wind up with a 40, 45 percent mark-up. That was the theory of sundries. Leon Stern at that time represented the Cendee Candy Company. I knew that he did because he sold the airlines various of these

candies. He got a hold of Mr. Cohen. Mr. Cohen came to my office. He came to Progressive Drug and we discussed setting up packaging to be sold over the counter at Progressive.

That deal never came up because again Progressive didn't have the money in the final analysis to carry the inventory. But there was a lot of work done on it.

Q Did you have meetings with either or both of the company managers of Progressive Drug also?

A Not with Mr. Malbe who by the way I didn't recognize and he was the president and I was up there 150 times.

Q I said the company managers.

A Malbe said he didn't know me and I didn't know him either. He basically handled the servicing. He was a sales manager for the standard proprietary items that he had been selling there for 30 years. He had nothing to do with the mainstream of the reorganization that went on.

That was Hainick and Press.

Q I asked you: Did you have meetings with Hainick, Press, Cohen, Stern?

A Basically -- not much with Hainick. Almost all of them would have been with Larry Press and Leon Stern and Cohen. And by the way Richard Bertoli attended a few of those meetings.

Q On that occasion monies were spent on behalf of Progressive Drug?

A Yes, sir.

Q Did you pick up your proportionate share or better than that of the checks?

A At least three-quarters of them. With the exception that I was with Mr. Hainick, then he would pick them up the largest percentage of the time because he had a credit card from Progressive, I believe.

Q But the rest of the time you picked it up?

A Yes, sir.

Q I believe you remember yesterday Mr. Stern talked about a trip to California to see a Major Riddle and then you went to Las Vegas and things?

A Yes. The main thrust there was the possibility of actually buying the drug stores. Mr. Stern really didn't have the full impact of what I had in mind. There was the possibility of buying additional drug stores in California.

Q Who was buying them?

A Progressive.

Q Was that the intention of going out there?

A Yes, sir.

Q Was that discussed with Major Riddle?

A Yes, sir.

Q Did anything come out of that?

A No, sir. He was interested but then there was no real capital available.

Q Did you spend your money or the money there on behalf of Progressive Drug?

A I would say I spent 50 percent of Manger's money. I spent 30 percent of Progressive's money and maybe 20 percent of my money. I lost $300 out there shooting crap, my money. I borrowed it from Mr. Stern and I paid him back.

Q During this period of time, Mr. Rosen, were you still actively participating in the work of Mr. Manger?

A Yes, sir.

Q You said, I believe, that you were either sales or marketing?

A Yes, sir.

Q Were you still selling or doing your marketing procedures with Mr. Manger?

A Yes, sir. As a matter of fact, it comes to mind, why part of the expense in California in my mind was Mr. Manger's was because we were starting to do business out there too.

Q Manger was expanding at this point, is that right?

A Yes.

Q Where was Mr. Bertoli during this period of time? Was he controller of Hanger?

A Yes, he spent his time in Long Island City, 98 percent of the time.

Q And that is where your plant and your offices were, is that correct?

A Yes.

Q Did there come a time, Mr. Rosen, in 1966, around April 15, when it became necessary to file an income tax return?

A Yes, it always is.

Q I show you exhibit 1 in evidence and ask you, is that the return which you filed?

Excuse me, if I said 1966, I mean this is around Arpil 15, 1967, for the calendar year 1966. Is that correct?

A Yes. And it is dated May 1, 1967.

Q Mr. Rosen, did you prepare that tax return?

A No, I did not.

Q Who prepared that tax return?

A Bertoli, my friend.

Q At that time were you and Mr. Bertoli friendly?

A Yes, Very, very much so.

Q Was Mr. Bertoli aware at that time of your income? Was he the keeper of the records of Mr. Hanger, Inc.?

A He was. He was also the keeper of records of every single record of mine of personal business.

Q Did you keep any personal records other than those that were kept by Mr. Bertoli?

A Never a slip of paper.

Q So any personal financial records that were attributable to you were kept by Mr. Bertoli, is that correct?

A Not only personal records, but records of personal problems and personal lawsuits that I was involved with at that time. He had every single personal record of mine.

Q Was Mr. Bertoli aware at that time that you had received any --

MR. BUSH: I am going to --

MR. HOEY: May I finish first, please?

MR. BUSH: I am sorry, I thought you had.

THE COURT: I think I am going to agree with the government, because I don't see how Mr. Rosen can tell us what another man's mind is doing at the time.

MR. HOEY: All right.

THE COURT: Just rephrase it.

Q Mr. Rosen, had youever discussed Progressive Drug with Mr. Bertoli prior to April 15 or May 1, 1967?

A Intimately.

Q Had you ever discussed the fact that you were

receiving some reimbursement for expenses with Mr. Bertoli prior to April 15, 1967?

A Yes, sir. He knew every bit of it, every dollar.

Q From whom did he learn that?

A From me.

Q Did you keep him continually aware of the fact as to what was happening with you as an individual on behalf of Progressive Drug?

A Yes, sir. He also told me that he had conferences with the accountants for Progressive in which he told them that this was to be treated as expenses to Mr. Rosen in a particular amount; that he had notified the accountants for Progressive that was doing the audit. I believe it was Westheimer.

Q Would that be Westheimer, Fine and Berger?

A Yes. And we were on a relationship with them, because I think they were doing work for us at Hanger also. So there were communications back and forth between the accountants. And they knew it.

Q Mr. Rosen, did you prepare the tax return?

A No, sir, I did not.

Q Mr. Bertoli prepared that?

A He prepared the tax return for me. He put it under me. I looked at the top amount, turned it over and signed it.

Never even looked at any of the internal parts there. And I have done that for ten years the same way.

Q Did you rely on Mr. Bertoli?

A 100 percent.

Q Did you have a discussion with Mr. Bertoli at the time the tax return was drafted or the time the tax return was signed --

A Yes.

Q -- concerning any moneys you may have received from Progressive Drug?

A Yes.

Q Did you tell Mr. Bertoli that you were aware of the fact in words or substance that you had received moneys from Progressive Drug but that you were not going to report them?

A Never.

Q Did you have any discussion with him concerning that as of the time you signed or had that prepared?

A I never told Bertoli to eliminate anything from my tax return. I never told anybody to delete anything from my tax return, ever. I trusted him. He told me when he prepared this report, I said, "Dick, is everything okay?"

He said, "It's covered a hundred percent."

One part here, about home expenses, he said,

"Well, when the auditor comes up, we can fight that out and adjust the taxes if there is any tax due, because it is something with the vouchers."

And he had handled --and I trusted him -- because he had handled the tax problem that I had before with the IRS and he had settled it, he was a personal confidant. He knew everything about my business. It would have been suicide for me to have asked him to eliminate something from my tax return. I am working with this man every day of the week. The logic isn't there.

Q In other words, you are telling us you did not tell him to eliminate that?

A Never.

Q I believe you did say that you relied upon him completely in the formation of your tax return?

A 100 percent.

Q Mr. Rosen, did you then or do you now know how much you received in expense money which would be required to be reported on form 1099 of the internal revenue?

A I am utterly confused. There have been newspaper reports of moneys received by principals, I have been asked from the state, the federal, the tax department, the FBI, not only in the state, the district attorney. I read reports, I was told things, I was served in a lawsuit, 150

pages thick. I thought that it was between $2,000 and $3,000. As time went on, and I heard around me it could have been $4,000. I further heard it could have been $5,000. So I estimated anywhere from two, three, four, or $5,000. And that's what I stuck with. And I told this to the IRS. I was investigated by agents of the IRS, who told me that I was not the target of the investigation, that Mr. Bertoli was.

Q Is that the reason that you wrote the paragraphs which are at the bottom, the last two paragraphs on page 2 of Government's exhibit 8 in evidence?

A When I wrote this I was utterly confused. There was so much notoriety, there were so many mixtures of information, I just did the best I could to recreate it. I was hot as anything, at the newspaper advertising that was out, getting me involved with big Mafia inclinations. So I wanted to be called as a witness, and I wrote this, I stayed up a couple of days putting this together. Then when the time came, every day I started to cool down a little bit and cool down a little bit and saying, "You're better off trying not to get a retraction, and it was dying out already, let it die."

Then I was concerned with some of the language that I had in here, which said that I put on my tax return.

Because I thought it was on my tax return. This was my assumption. Based on what was coming out and the vindictiveness that was apparent to me with Bertoli at that time, I wasn't certain, so I didn't mail the letter. And Bertoli at that time was in an overt way trying to destroy me, in every way he could.

Q Did you ever give this to Mr. Greenberg or anybody down in the SEC?

A He says so; I may have. If I did, by the way, it would have been not regarding taxes, because it would have been a Securities and Exchange Commission. I was also, by the way -- understand, I was the chief executive officer of a public company. There were things here that the SEC, if they didn't have any rebuttal, could have had a stop order on the stock. So I could see the logic that maybe I gave this to him to get the SEC aware of the facts that this was nothing to do with the Mafia; nothing to do with the taxes with the SEC in any case.

6-2 Q By the way, Mr. Rosen, I show you Government's exhibit number 9A in evidence, a form, information form, which is listed as copy C for payor's records. Did you ever receive that, a copy of that from Mr. Bertoli?

A I would say that, I don't recall it, but he would have made it out and put it into the file that he kept my

records in, that he kept.

Q He kept all your records, is that right?

A Every record. And by the way, when that letter was written, I looked for my file to try to get my income tax returns. Every single personal record that was kept on the premises of Mr. Hanger, there was not a single record there that I could verify anything, that I could look into and examine, and I then requested the internal revenue to please send me copies of my returns for 1966 and 1967, because I didn't know what was going on.

Q You did not have the copies?

A No, sir.

Q And they were not in your personal file in Mr. Hanger?

A And, by the way, there was an internal revenue investigator on the premises at that time. He had the records, and he said that "I can't give you -- I can't even let you see the returns. You have to ask for the returns from the IRS to come back." And within about 9 months or a year I did get them.

MR. HOEY: Your Honor, would this be a good time to break?

THE COURT: Would you like to break?

MR. HOEY: I would like to break until 2 o'clock now,

if I may.

THE COURT: All right, sir.

Mr. Charon and ladies and gentlemen, we will resume at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court - jury present.)

P A U L L A W R E N C E R O S E N R A U C H,

resumed.

THE COURT: Mr. Hoey.

DIRECT EXAMINATION CONTINUED

BY MR. HOEY:

Q I show you Government's Exhibit 1, Mr. Rosen, at this time.

Mr. Rosen, at the time you signed that document, Government's Exhibit number 1 in evidence, did you, sir, intend to evade the payment of a substantial amount of your income tax for the year 1966?

A No, sir.

Q Did you knowingly and willfully file a false income tax return for the year 1966?

A No, sir.

Q Did you, sir, have taxable income which you failed to report for the year 1966?

A No, sir, I did not.

Q Did you, sir, in good faith sign that tax return?

A I did, yes, sir.

Q Did you rely upon the preparer of that return, Mr.

Richard Bertoli?

A Yes, I did. He had all of the facts.

Q In effect, you are saying that you did not commit a fraud upon the government by filing a false tax return?

MR. BUSH: Objection, asked and answered and it is a legal conclusion as well.

THE COURT: Yes, this is just repetition.

Q Mr. Rosen, do you know when Intercontinental Hanger, Ltd. was founded?

A 1965, late in 1965.

Q Was that a wholly owned operation of Mr. Hanger, Inc.?

A Yes, sir, it was.

Q The books and records of Intercontinental Hanger were kept where?

A Mr. Bertoli kept them, certain of them, and others of them were kept at the accounting office in Montreal, Quebec.

Q Could you speak up a little. We do have outside noises.

A I'm sorry, excuse me.

Q Did you keep personally any of the records, financial records or any of the records, of International Hanger?

A No, sir, I never did.

Q Did there come a time when you received certain sums of money as is set forth in Exhibit 12, Government's Exhibit 12, through the Toronto Dominion Bank from International Manger?

A Yes, sir.

Q And did that start on March 3, 1967?

A That is what it says right there, yes.

Q Do you recognize the signatures that appear on that?

A Yes, there is my signature on there and Mr. Bertoli's.

Q Indicating the second layer?

A Mine and Mr. Bertoli.

Q The third layer?

A Mine and Mr. Bertoli. Mine and Mr. Bertoli on the last ones. It is myself and Mr. Bertoli who signed.

Q They were the authorized signatories, were they not, sir?

A Yes, sir.

MR. HOEY: Where I was mentioning International Manger, I meant Intercontinental Hanger, your Honor.

Q Mr. Rosen, would you tell us the circumstances leading up to the issuance of those checks, copies of which are Government's Exhibit 12 in evidence?

A Ihad financial pressures. I discussed them with

Mr. Bertoli and he said he would follow the pattern of Mr. Birnbach that had been previously established and that they would make loans to me over theperiod of a next year or so from the Canadian subsidiary. I said fine and that is what was done.

Q Is that the entire conversation you had with Mr. Bertoli at that time, sir?

A Essentially.

Q Did you agree on any amount that you were to receive?

A Yes, the amounts that were described in there.

Q What is that amount?

A I don't recall.

Q Would $250 be correct?

A $250, yes. He said that he would take care of it.

Q Was there any discussion as to whether or not he was to secure any money at that time?

A I think we discussed that he also would take some at that time, also.

Q Do you know how much he was to take?

A I had heard in the courtroom $100. That he testified to, that is.

Q Did you receive the monies which are there, sir?

A Yes, I did.

Q Did you receive that, sir, for any work, labor or services that you performed for Intercontinental Hangers?

A No, sir, it was as a loan.

Q Did you at any time intend to receive that money as income?

A No, sir. It was never income.

Q Did you continue to receive that money in through part of 1968? I show you Government's Exhibit 12A in evidence.

A It continued up until May 27, 1968.

Q Mr. Rosen, during 1968 did you render any services to Intercontinental Hanger to have income to come to you?

A No, sir.

Q Was that also to be considered a loan by you?

A Yes, sir, and so recorded on the books.

Q How did you intend to pay that money back?

A We hoped that the company would prosper and that I would have an ability through a bonus to possibly pay it back or I would have to make my own arrangements to pay it back in any way that I could.

Q Have you ever paid that money back, sir?

A Yes, it was paid back in full.

Q When did you pay it back?

jgk

A September of thisyear -- pardon, September of 1973.

Q What were the circumstances leading to your repaying it in September, 1973?

A Well, not only was the money in regard tothese checks, there was the money that I took from Utility Holding. There was also a continuing loan account year by year that had increased where in September of 1973 it was 43 thousand some-odd hundred dollars that I was owed due and payable at that time.

MR. BUSH: I am going to object to testimony relating to loans other than the payments in question here.

THE COURT: I will of course agree because Mr. Hoey didn't ask for those. As I understand it, you paid back thesums of money that you have been talking about here to Intercontinental by September of last year or last September?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Where did you get the money to pay it back?

A I borrowed it from a bank. I made a bank loan. This was on the demand of the corporation.

Q Did they formally notify you to pay them back the loan?

A Whathappened was that in September we were cut off from all our allotments of plastic as it is a product that comes out of oil and the company overnight was facing a bankruptcy at which time there was a board of directors meeting and all of the officers of the corporation were required to return any loans that they had outstanding at that time. There was a loan in excess of the amount that I owed the government, that the government claims was salary here.

There were loans to Mr. Ben Zuckerman who was here yesterday.

MR. BUSH: I object again to the line in keeping with my previous objections.

THE COURT: Yes, we will strike all that was not pertinent to the last question.

Q Anyhow, you did repay theloan from Intercontinental Manger?

A Yes, sir.

Q By the way, Mr. Rosen, were reports made to the stockholders of Mr. Manger?

A In every year-end statement of Intercontinental the loans were entered on the books as provided by the accountants in any reporting that had to be submitted --

MR. BUSH: I object to any reporting beyond that

done by Intercontinental.

THE COURT: I agree. Let's go ahead, Mr. Hoey, please.

Mr. Rosen, it would help you and everybody else if you would just answer the questions that your lawyer poses and not go on to another subject, you see?

THE WITNESS: Yes, sir, I understand.

Q Mr. Rosen, was the fact that there were loans by you as an officer made a matter of public record or certification by the accountants?

MR. BUSH: Objection. I think Mr. Hoey is trying to get in by the back door something he couldn't get in previously.

MR. HOEY: I object to the characterization, your Honor. I think it is entirely uncalled for.

THE COURT: I don't even get to that characterization. However, I sustain the objection on other grounds.

Q Mr. Rosen, I show you Government's exhibit 3 in evidence. Is that your tax return for the year 1967?

A Yes, sir.

Q Was that signed by you?

A Yes, sir.

Q Mr. Rosen, is there any indication there of the receipt of any income from Intercontinental Hanger?

A No, sir.

Q Why not?

A Because I did not get any income from Intercontinental Hanger.

Q Mr. Rosen, in the tax return of the year 1967 did you attempt toevade the payment of a substantial amount of the federeal income tax on your 1967 tax return?

A I did not.

Q Did you make any attempt to evade or defeat any tax for that year?

A I did not.

Q Did you knowingly and willfully attempt to evade or defeat the income tax for the year 1967?

A I did not. No, sir.

Q Did you, sir, in good faith sign that tax return?

A Yes, sir.

Q Did you read that tax return before you signed it?

A Only in a general way that I have always read my tax returns.

Q Did you in any way for the year 1966 and/or 1967 attempt in any way to avoid paying taxes?

A No, sir.

Q Did you believe at the time you filed your tax returns that they were true?

A Yes, sir.

MR. BUSH: I am going to object to any further questions --

MR. HOEY: You may inquire, Mr. Bush.

CROSS-EXAMINATION

BY MR. BUSH:

Q Mr. Rosen, let us turn our attention first to Progressive Drug Company. When was it that you first heard of that company?

A I think I testified to 1965, late 1965, early '66.

Q That is the first time you heard of it?

A I believe so, yes.

Q Did you do any work in connection with Progressive prior to the time that Pawnee bought Progressive?

A Only in that -- well, Pawnee didn't buy it; they had a contract originally to purchase it. I think as a

matter of fact even before Pawnee there was a contract that existed in the individual names of either Larry Press or Henry Hainick or one or the other, and in which the originating deposit -- now, I could be wrong, but as best as I can recall -- even before Pawnee, the contract for the purchase was to the individual; and then the contract was assigned to Pawnee, which was organized by Mr. Press. And there were conversations swinging during that period of about 4, 6 or 8 weeks, something like that.

Q To return to my question, Mr. Rosen: Did you do any work in connection with this purchase and for how long a period of time prior thereto?

MR. HOEY: I am going to object now to the form of the question, as though that was the one that was previously asked. It is an entirely different question.

THE COURT: Will you repeat that question, please.

(Question read.)

THE COURT: First of all, I will have to sustain the objection as to form, because we have two questions. Let us go back. One at a time. There is certainly nothing wrong with the thrust of either question. Just break it down.

Q Who ultimately purchased Progressive, Mr. Rosen?

A Twentieth Century Industries.

Q Did it use the vehicle Pawnee to do that?

A Yes, it did, sir.

Q When did that occur?

A I think '65, early '65.

Q Early '65?

A I don't know the exact date. You have to refresh-- give me some bearing on time. I have had an awful lot of pressure on me the last few days, and I may lose a whole year or two. So just bear with me and give me --

Q Was it in 1965, Mr. Rosen?

A I believe it was, yes.

Q How long prior to the time Pawnee purchased Progressive did you do work in connection with that purchase?

A Maybe a month or two.

Q So that work would have been done in 1965, would it not?

A I believe so.

Q When was it that you first started to receive these payments from Progressive?

A I think it was after the closing when Twentieth actually bought it. I just don't have the date offhand. If you refresh --

Q Who else was to receive these payments besides yourself?

A I don't know. I have no knowledge of any payments to other people on any kind of routine basis.

Q So, to the best of your knowledge at this point in time the only person who received payments from Progressive on a recurrent basis was yourself?

A Well, I don't know what you mean by recurrent basis. I was to be given money on a weekly basis, generally at around a hundred dollars a week, as a return for expenses that I was to lay out. At some point Eve Abrams, Mr. Joseph Abrams' wife, was also having some expenses, and I understand that it was a hundred dollars a week that went on for a short period of time, I don't know how long. I myself gave her certain amounts of those checks or cash or a combination of the both. I think maybe X dollars, I don't know what amount it was.

Q So, to your knowledge, then, Eve Abrams was also receiving $100 per week, was she not?

A Not exactly that, but that she was receiving from between a hundred and $200 on a weekly or bimonthly or monthly basis.

Q In point of fact this money came from you, did it not?

A Only, I think, for a very, very limited period of time.

Q By a limited period of time could we be more exact? Did she begin to receive this money in February?

A Well, you will have to help me with the date, I don't want to guess, but I think I gave her money for about two months.

Q How long after you received your first payment did she receive money?

A I would say probably within a week.

Q And that went on for roughly two months, did it?

A A couple. I think a couple of months.

Q And then she never received any further money from you, is that correct?

A It may have gone on slightly longer than that. I don't know.

Q Well, let us pick an outside limit.

A I won't do that.

Q Would it be less than six months, Mr. Rosen?

A I won't do that, I won't pick any. I am just not certain.

Q Was it more than six months?

A I don't know.

Q Was it more than a year?

A I can't conceive it being a year, no.

Q So it was less than a year, then?

A I'd say less than a year.

Q And she began receiving these payments within a week or two weeks after you first received such a payment?

A Yes, sir.

Q To your knowledge did Martin Goldman receive such payments?

A No to my knowledge, no, sir.

Q To your knowledge did Sam Goldman receive such payments?

A Not to my knowledge, no, sir.

Q Incidentally, was Eve Abrams an employee of Progressive Drug Company?

A Not to my knowledge.

Q Was she an officer of Progressive Drug Company?

A No, sir, not to my knowledge.

Q Did she render services by which she was required to travel on behalf of Progressive Drug Company?

A It was understood that she did.

Q It was understood between you and who else?

A Mr. Hainick.

Q Mr. Hainick.

A Yes, sir.

Q What did Mr. Hainick say to you with respect to the travel that Eve Abrams had rendered on behalf of Progressive?

A Only that she was a courrier to Mr. Joe Abrams who is her husband who was in jail.

Q And Mr. Hainick then asked you to convey this $100 a week to Eve Abrams for him, is that it?

A Yes.

Q And you did this for a period of somewhat less than a year beginning shortly after you began to receive your payments?

A I think it was a couple of months. I don't think --

Q Just a couple of months?

A I think so.

Q Did Mr. Hainick at the time he directed you to pay Eve Abrams also tell you he was receiving $100 per week?

A No, he did not, sir.

Q Did he tell you that Mr. Press was receiving $100 a week?

A No, sir, he did not.

Q How did you happen to actually get this money? Did you go to Progressive yourself?

A No. The testimony here, from what I have been told, a messenger from Mr. Hanger had picked up money from

time to time --

Q Do you know how you got this money? Apart from the testimony here today, that is, or yesterday.

A I don't really recall. I would assume thatthe checks were mailed to me possibly. If there were some checks they may have been given to me by the Hanger messenger.

Q That would be Abie?

A I would say most likely Abie or Abie turned it over to one of the girls in the Hanger office. I may have received it from one of the girls at the Hanger office. One or two checks could have been sent to my house.

Q Did you receive these sums of money each and every week?

A No, sir.

Q You missed a few weeks?

A It wasn't, as you say, every single Friday afternoon that I was receiving checks.

Q How often each month during the year 1966 did you receive these payments?

A I would say that they were done on a weekly basis.

Q They began on a weekly basis?

A And more or less continued on a weekly basis.

Q They more or less continued on a weekly basis for the entire calendar year?

A Not as if it were a paycheck where you know on Friday afternoon you get your paycheck. Once a week I would get either a check or cash or combinations of both.

Q You got combinations of both?

A Yes.

Q When did you start to get combinations of both?

A I don't really recall. I don't really mean that I got combinations of both. I could have gotten both.

Q Butyou don't recall now whether you got cash and checks or just checks and just cash, is that your testimony?

A Yes, sir, it would have been a combination of both.

Q It would have been a combination of both that you received at one particular time?

A No. Not on Friday if I received $50 in a check and $50 in cash, I didn't mean it that way. I meant one week it could have been cash and the other week it could have been a check.

Q You get cash one week and the next week they mail you a check, is that it?

A I am not sure of the continuity either. I may have received cash for the first couple of months and then cash for the next couple of months. I remember overall that I received both. I also recall, by the way, on a couple of occasions being in Progressive and I think getting an

envelope.

Q Mr. Goldfinger gave you an envelope?

A No, I would have gotten it from probably Larry Press or Henry Hainick. Somebody up there.

Q In this envelope was there a check or was there cash?

A I don't recall. I know it was one or the other.

Q You said that you rendered services in behalf of Progressive. I believe it was your testimony that you were lining up sundries, to use your expression, is that correct?

A Yes, sir.

Q In the course of lining up these sundries you went to Chicago, among other places, is that correct?

A Yes, sir.

Q And roughly how many times did you go to Chicago?

A I believe it was three times. It may have been twice.

Q In your direct testimony did you say more times than that? Did you say ten or 20 times?

A Not to Chicago.

Q What other cities did you go to?

A I was in California.

Q How many times?

A I believe once and then Las Vegas as part of the

same trip. It may have been a second time to California because thereafter I went a few more times.

Q You went a few more times to California. There was at least one trip and possibly two or three additional trips, is that correct?

A I am not certain that the additional trips were regarding Progressive Drug business. It is only the first one I recall as being Progressive Drug business.

Q At this point you only went to California once, is that correct?

A On Progressive Drug business, yes.

Q And you went to Las Vegas once, is that correct?

A That was the same trip.

e?

r five different occasions.

go to New Jersey?

if anywhere?

any other trips of any

these meetings with this

A I had them at Chicago and in New York.

Q Where in New York?

A Well, we had them at the Waldorf when I had them with Mr. Carroll. We had them at the offices of Mr. Hanger in New York on Fifth Avenue on a number of occasions.

Q How many times at the Waldorf?

A Oh, two times, I would say.

Q Two times?

A Maybe three.

Q How many times at your offices or Mr. Hanger's offices?

A I would say eight or ten times.

Q How many times elsewhere?

A Double that amount.

Q Excuse me?

A Double that amount, maybe 20 different conversations.

Q Doube that?

A Not double 20, double eight or ten.

Q Where did they take place?

A Some of them took place at restaurants and some of them took place at cocktail lounges.

Q Were you by yourself then?

A Pardon?

Q Were you and Mr. Carroll or whoever else involved by yourself or were other people present?

A I was involved with Carroll and we were involved with other people, some from the staff of Dr. Denton and some were Mr. Lee and Mr. Lee's associate, Mr. Janzten. Some with Mr. Press. There may even have been one with Mr. Hainick.

Q When did these discussions start?

A About the time that the company was taken over by 20th Century Industries.

Q In 1965 or 1966?

A When was it taken over? Can you give me the dates?

Q I believe you testified it was in 1965, the latter part or sometime in 1965, in any event.

A It went on for a considerable amount of time from the time it was purchased.

Q How long did it go on?

A I would say a good six months.

Q On this candy business where did you go there and with whom did you meet?

Let's take where you went first.

A We didn't really go to any particular place for the candy business.

Q You didn't go to California on the candy business?

A With one part of it it was with Mr. Cohen from

Cindy Candy Company in Jersey and in that regard I believe I visited his factory once.

Q That was in New Jersey?

A I think so or Long Island.

Q Did you go to California with him on the candy business?

A No, not Mr. Cohen. I met with Mr. Cohen on one or two occasions in Long Island City at which we had a very big meeting that Mr. Cohen, Mr. Press, Mr. Bertoli, myself, Leon Stern were all there in which we had a product meeting where we were doing the designing of the product line and we had maybe 100 different assortments of candies laid out on the conference table at Mr. Manger.

We also met, I believe, once or twice at the offices of Progressive Drug with Mr. Cohen and Mr. Stern.

Q Where else did you meet with them?

A After these meetings we would, in some cases, have dinner together, at which I would have picked up the tab.

Q Did you go with Mr. Stern to California on this candy business?

A There are two separate parts to it. The first part --

Q First, did you go with Mr. Stern to California on

the candy business?

A The candy business would be too general a term. I had more specific reasons for going to California with Mr. Stern.

Q Did you have any dealings in California at all concerning the candy business?

A There was a possiblity in his mind of some packaging of very unique candy items which I really didn't place too much value on. I didn't think we would have very much success with it. The prime purpose for me going to California --

Q Just a second, that wasn't the question, Mr. Rosen.

Did you go to Las Vegas with Mr. Stern in connection with the candy business?

A You could say it was in relationship with the candy business, yes.

Q Did you pay for your ticket there?

A I believe the company, Mr. Hanger, did.

Q Did Mr. Hanger pay for Mr. Stern's ticket?

A No, sir.

Q How many of these expenditures relating to Dr. Denton did Mr. Hanger pay for?

A I would say half.

Q How many did you pay for out of your own pocket?

A I would say the other half.

Q How many of these expenses relating to this candy business did Mr. Hanger pay for?

A I would say half.

Q Did you pay for the other half --

A Can you give me the question again?

Q How many of the expenses relating to the candy business did Mr. Hanger pay for?

A I don't know if they paid for any, really. I don't know, but they may have paid a percentage.

Q You paid for them all?

A I may have charged one or two dinners to my credit card. The credit card I had was a Mr. Hanger credit card and the others I would have paid cash, which I would have taken out of my pocket and those were actually the expenses I had been accumulating over a period of time for expenses.

Q The monies you took from your pocket, did you receive them in the way of salary from Mr. Hanger?

A No.

Q All these expense monies, where did these expense monies come from?

A These were the monies I was receiving from Progressiv

Drug Company.

Q In other words, it was an exact set-off between the monies you received from Progressive and the monies you spent, is that what you are saying?

A No, sir.

Q It was a rought set-off?

A Yes, sir.

Q You didn't spend anything beyond that amount of money?

A I may have.

Q Youdidn't spend it before you actually received the money from Progressive?

A I would say I may have spent some before. I may have spent some during, and I am certain that I spent some after.

Q How long have you been a businessman, Mr. Rosen?

A At least 15 years.

Q Have you ever had travel and entertainment expenses prior to the time you became connected with Progressive?

A Yes, sir.

Q When was the first time you began to incur travel and entertainment expenses?

A I guess it is the very first time that I was a businessman or in an executive capacity as a businessman.

Q That was at least 15 years ago?

A I would say generally that, yes, sir.

Q Have you ever had any occasion to deduct those travel and entertainment expenses from your salary on your income tax returns?

A I imagine so.

Q Prior to the occasion when you were involved with Progressive?

A I imagine so.

Q And in connection with deducting those sums of money, I take it you would calculate what they were with receipts, would you not?

A Sometimes yes and sometimes from memory.

Q Sometimes what? I didn't catch the latter portion.

A From memory.

Q Did you make it a practice to get receipts on those occasions?

A Not really, no.

Q At the end of the year you took a wild stab at what they were?

A Not a wild stab, no, sir.

Q But you would estimate that "I spent $100 a week on expenses in connection with the original Yankee Plastics",

is that it?

A Something along those lines.

Q Did you estimate "I spent $200 a week in connection with those expenses?"

A I don't understand the question.

Q What was the highest amount of expenses of this nature, travel and entertainment, that you had incurred on a weekly basis prior to the time you became associated with Progressive?

A I wouldn't estimate.

Q But you would estimate for your tax return, would you not?

A Yes, sir. I wouldn't estimate here today.

Q You wouldn't estimate here but you would estimate when you put the deduction down on your tax return?

A That is correct.

Q Did you ever have any trouble with respect to those tax returns?

A Sometimes yes, sometimes no.

Q Were you ever brought in for an audit?

A I believe so.

Q Were you in fact told you owed back taxes?

A I believe so.

Q This all occurred, I take it, before you became

associated with Progressive?

A That I was called in?

Q That you were called in.

A Probably around the same time.

Q Was one of the reasons that you were called in that you didn't have substantiation for the expenses in your tax returns?

A Arongst others, I would assume so.

Q This was about the same time you were with Progressive, is that correct?

A Correct.

Q Did you ever substantiate any single expenditure that you made in behalf of Progressive to the company?

A I may have, I don't recall.

Q You don't recall?

A I may have.

Q Do you recall ever getting one receipt, Mr. Rosen?

A I may have. I am sure I got receipts.

Q Did you take those receipts and ever give them to anybody who worked at Progressive?

A I don't believe so.

Q Did you ever take occasion to calculate what the dollar amount of those particular receipts were?

A No, sir.

Q Do you have any idea how much those receipt were? Did you have any idea as to the amount of those receipts?

A Are you asking now on a weekly basis, one receipt, five receipts, the total amount?

Q Let's take it on a weekly basis first.

A I estimate they ran between $50 and $100 a week.

Q These receipts did?

A My expenses did.

Q My question, Mr. Rosen, is: How much in the way of receipts did you have on a weekly basis?

A I didn't collect them on a weekly basis.

Q You didn't collect receipts on a weekly basis?

A No.

Q Over what period did you collect receipts.

A Just from time to time I would retain one.

Q From what in connection with Progressive? To what time in connection with Progressive?

A There was no specified period.

Q There was no specified period?

A No, sir.

Q Did you begin collecting when you first received the cash payments?

A I didn't make it a practice to collect receipts, sir.

Q When first did you collect such a receipt?

A I couldn't specify any particular time. I admit that from time to time I got a receipt for some of the expenditures and they were a very small percentage of the overall amount of money that I received from Progressive Drug. If I got between, let's say, three or four or five thousand dollars from Progressive Drug, maybe I had receipts for three, four hundred dollars, two hundred dollars.

I don't believe I turned them over to anyone at Progressive Drug.

Q You kept them?

A Then I just kept them in the house and eventually threw them out.

Q Did there come a time at the end of the year when the accountants asked you for receipts to substantiate these expenditures?

MR. HOFFY: I object to the form of the question. It presupposes that the accountants in fact did ask him for receipts.

THE COURT: I suppose it could be construed that way. Why don't you simply rephrase it, Mr. Bush, to avoid this possible problem.

Q Did there come a time when the accountants asked you for receipts, Mr. Rosen?

A You are referring in preparation of my income tax return?

Q I am referring to the accountants from Progressive.

A No, I was never asked anything.

Q Did any officer or employee of Progressive ever ask you for receipts to substantiate these sums of money that you had spent?

A I don't think so, sir.

Q Is it that you don't remember now?

A I believe that I had some conversations with Sam Goldman who was the chairman of the board of 20th Century who knew I was getting expense money and he said, "Are you giving me receipts, where are the receipts".

Q During the course of that conversation did Mr. Sam Goldman also mention that he was receiving $100 per week?

A No, sir.

Q What did you say to Mr. Goldman -- "I will give you the receipts"?

A No, I didn't say that.

Q Did Milton Gottesman ever ask you for receipts?

A I don't believe so.

Q Did Mr. Little, after the company was sold, ever ask you for receipts?

A I never saw Mr. Little after the company was sold.

Q Did you ever have a conversation with Mr. Little with regard to receipts for the monies that you expended?

A No, sir. As a matter of fact, I hadn't received any money from Progressive I think for six months previous to the time that I met Mr. Little and then he had no conversation with me regarding $400 a month.

Q Regarding how much?

A $400 a month which he said, in testimony here, that --

Q Is it your testimony then that he never asked you about the amount of money that you received from Progressive?

A That is correct, sir.

Q Did there come a time when you saw Mr. Little after the Progressive concern had been sold from 20th Century to Cordwell?

A No, sir. I don't recall ever seeing him.

Q Did you ever see Mr. Little before his appearance in court here during the course of this trial?

A Yes, I believe I saw Mr. Little on two occasions, once when I was on Progressive business in Florida, and I believe there could have been two times -- I believe once at the St. Moritz Hotel in New York where Mr. Brooks was staying, who was the chairman of the board or the control

party in Cordwell, who we were trying to interest in the sale.

And he introduced me, I believe, to Mr. Little as his son-in-law, I think. I thought he was a relative of Mr. Brooks. And I think one other time.

Q I show you the checks affixed to the sheets which have been introduced into evidence as Government's Exhibits 14 and 14A and I would ask that you look at the endorsements in those particular documents and tell me whether you signed all those checks?

By signed I mean endorsed in the process of cashing them.

A I think some -- it looks like it could be all of this group. I was just questioning this one. My wife may have signed my signature, but I am not sure. This is correct. This is correct. I don't see any endorsement on one of them.

Q Pass that one along.

A I am not sure that every single one of these are my signature.

Q Do you recognize your wife's signature?

A Yes. I don't think it is my wife's either.

Q Would that be Eve Abram's signature?

A I wouldn't know.

Q Did you receive that particular check, Mr. Rosen?

A I don't recall, sir.

Q Were there some checks made out to you that somebody else received?

A Yes, there may very well have been.

Q It might very well have been Eve Abrams. These checks were received at the very end of the time that you received payments from Progressive, were they not?

A I didn't look at the dates of the checks.

Q Go ahead and look at the dates at this point, Mr. Rosen.

A This is December, '66, this is all December, 1966. This is January, '67. Well, I have December, '66. I have January, '67 and February, '67. What is the question?

Q These checks were all received at the very end of the time that you got payments from Progressive, were they not?

A I don't know what you mean by "end of the time." What does that mean?

Q When did you stop getting payments from Progressive?

A Very possibly you would know better than me. You have all the checks, you have all the evidence.

Q You are the witness, Mr. Rosen. Suppose you tell the jury.

A If this is the last check -- I don't know I even received this -- but the last check that you showed me here in evidence is dated February 10, 1967, made out to me, signed "L. Rosen." That is the last check.

Q Is that to the best of your recollection here today near the end of the time that you received payments from Progressive?

A I would say.

Q It is.

A I would say so, yes, sir.

Q And --

A I am not sure, now that you bring out this thing about Eve Abrams, I am not sure that all of these are my

signature.

Q So it is conceivable that Eve Abrams signed one or more of these checks, I take it?

A It's possible, sir.

Q And that you gave her, I take it, one or more of these checks?

A Yes, sir.

Q And this was at the end, approximately the time that you were receiving payments from Progressive?

A I am sorry, I am lost again with that question. Help me out.

Q When, to the best of your memory here today in this courtroom, was the last date that you received payments, whether in the form of checks or in the form of cash, from the Progressive Drug Company?

A I would go off the records that you show me here and have to say February, exactly what it says here, February 10, 1967. I wouldn't have any other recollection.

Q In other words, this check for February 10 of 1967 was the last payment that, to the best of your recollection here today, you received from the Progressive Drug Company?

A I think so, unless there is more checks that I don't know about. I don't recall. This is 1967. Everything

is on record. Everyone has looked at the records.

Q You don't recall whether you received any payments beyond that date?

A No, sir, I don't. To the best of my knowledge, I will accept what you have here, but I am not sure.

Q Mr. Rosen, we are not asking you to accept what we have here. We are asking you for the best of your recollection here in this courtroom today.

MR. HOEY: Your Honor, I am going to object to this as completely repetitious.

THE COURT: Perhaps, Mr. Hoey, but I do think this last point is a fair one to emphasize, in view of the witness' answer.

MR. HOEY: All right.

THE COURT: The question really comes down to this, Mr. Rosen: Aside and apart from what these checks show, do you have any independent recollection of any payments, for example, later than February 10, 1967, from Progressive Drugs, whether they be in check or in cash?

A No, I honestly do not, sir.

THE COURT: Let us go on to something else, Mr. Bush.

Perhaps if you don't mind, since we have had this interruption, we will take the afternoon recess at this

point.

MR. BUSH: Very well, your Honor.

THE COURT: Ladies and gentlemen, a ten-minute recess.

(Recess.)

(In open court - jury present.)

THE COURT: Mr. Bush.

CROSS-EXAMINATION CONTINUED

BY MR. BUSH:

Q Mr. Rosen, was it a fair statement that back in 1965 and 1966 you were a fairly free spender?

A I don't know how to comment on that.

Q You were paying for a lot of your expenses apparently with cash right from your pocket and not picking up receipts, is that correct?

MR. HOEY: I object to that as being argumentative.

THE COURT: I am sorry, I didn't get the phrase because you were both talking. Why don't you put the question again.

Q You were paying for a lot of expenditures in cash, were you not?

A Of the amounts that I described to you before.

Q You were paying for these expenditures in cash?

A The determination of it being "a lot" is sort of yours.

Q I can't hear you. You are going to have to speak up.

A You're indicating the word "a lot". I don't know what "a lot" is. I know the amounts generally and that is

the amounts that I testified to.

Q These amounts amount to at least $5,000, do they not?

A No, not necessarily.

Q They are less than $5,000?

A They may have been less than $5,000. I testified as low as two or three possibly. If you referred to Progressive Drug Company, it's anywhere from two or three and possibly as high as four or $5,000. There is a lot of latitude there.

Q Could it have been higher than $5,000?

A I don't think so.

Q Whatever the amount was, from two to five, were these expenditures made in cash?

A Some were in cash. Some were from the charge accounts.

Q And the charge accounts were Mr. Hanger charge accounts, were they not?

A In addition to that I had some personal charge accounts too that I could have paid out of my own private funds.

Q What were the personal charge accounts, with what firms were they?

A They were a half dozen restaurants that I had a

private charge account with and on occasion I would use that also. I would pay that myself from my own checking account.

Q Did you pay any of these things by check?

A Yes.

Q Other than the charge account payments, these expenditures would be in behalf of Progressive?

A Yes.

Q Have you brought any of those checks with you?

A No, I don't know where they would be. I wouldn't even suggest that I can bring them in to you. I have none of my records for those years.

Q Have you destroyed them?

A No, sir, I have not destroyed them.

Q So a portion was by cash, a portion by charge account to Mr. Hanger, a portion by your own personal charge, and a portion by checks, is that correct?

A If by a portion you mean that a portion is any part of a whole, meaning one cent out of one hundred cents, then yes, a portion. If a portion means substantial, no.

Q What was the substantial portion then?

A I can't describe it to you. You better describe it to me.

MR. BUSH: Your Honor, I would ask for a direction at this time that you direct the witness to respond to the

question.

THE COURT: I think with respect to this last question that you are entitled to an answer so I am going to ask you to put the question again and I am going to ask Mr. Rosen to put a direct answer to it.

(Question read.)

A I don't understand the question at this point, your Honor.

THE COURT: All right. I will ask him to rephrase it.

Q I believe in your earlier answer you said that you couldn't describe to either checks or cash or charge accounts what small portions meant, but you knew or had some idea what a substantial proportion of these payments were made, the form in which they were made.

MR. HOEY: I object to the form of the question. I believe it is in the question that that came forth.

THE COURT: Whatever the importance in that last statement, I think this is a fair question so long as you, the witness, understand it.

THE WITNESS: I don't at this point, your Honor.

THE COURT: I will ask counsel to put it again.

Q Out of these expenditures that you made --

A Which expenditures? Tell me specifically.

MR. BUSH: Your Honor, I would ask for a direction to the witness to let me finish the question.

THE COURT: We are going to let you finish the question, Mr. Bush, rest assured on that.

Finish it.

Q Out of these expenditures that you made on behalf of Progressive Drug Company, in what form were the most substantial proportion of them?

A In cash.

Q At this time, in 1965, you had the need for money, did you not, to attempt to settle the tax deficiency?

A Would you ask the question again?

Q In 1965 did you need money to settle a tax deficiency?

A I don't think we were up for settlement in 1965. It may have been.

MR. BUSH: I would ask that this document be marked for identification as Government Exhibit 53.

(Government Exhibit 53 marked for identification.)

Q Mr. Rosen, I show you a document which has been marked for identification as Government Exhibit 53 and ask if you ever received that or saw a copy of it or the document itself?

A I don't recall ever having seen it but I am sure

it was sent to me. It's addressed to me.

MR. BUSH: I would offer into evidence at this time Government Exhibit 53.

MR. HOEY: May I have a moment to read it? I have never seen it before, your Honor.

THE COURT: Yes, sir.

(Pause.)

MR. HOEY: I have no objection.

(Government Exhibit 53 received in evidence.)

THE COURT: What is the date of that document, if I may ask?

MR. BUSH: November 24, 1965, your Honor.

THE COURT: All right.

MR. BUSH: At this time I would request permission of the court to read a portion of this document to the jury.

THE COURT: All right.

(At this point Mr. Bush read portions of Government Exhibit 53 in evidence to the jury.)

Q In addition to that particular sum of money, you were required, during this time, to pay $15 a week, were you not, in the Matasow et al action, versus yourself, Matasow and Howard, I guess it's pronounced, is that correct?

A I didn't understand your question.

Q In connection with an action, a lawsuit brought

against you by two individuals, one of whose last name is Matasow and the other of whose name is Howard, you were required to pay $50 each week, were you not?

A I believe so, yes. I thought you said $15.

MR. BUSH: At this time I mark for identification three documents collectively as Government's Exhibit 54.

(Government Exhibit 54 marked for identification.)

xxx

Q Why was this $50 payment required, Mr. Rosen?

A Because of a judgment that was entered against me based on a guarantee of a loan that I had made for a friend of mine.

Q Specifically what order of the court directed that you pay $50 each week?

A I don't recall. I know you mentioned something to me about a contempt citation. If you want to refresh my memory, I will be glad to answer you.

Q I refer you to Government Exhibit marked for identification as 54 and ask you if that refreshes your recollection, those documents collectively?

A This is an order by a judge, an order punishing me for contempt and directing installment payments at $50 a week, yes.

Q What was the reason that you were held in contempt?

A For lying under oath, I guess, or improper state-

ments under oath.

MR. BUSH: At this time I would offer into evidence Government's exhibit 54 for identification.

MR. HOEY: No objection.

(Government Exhibit 54 received in evidence.)

MR. BUSH: I would note that the order was entered by the Supreme Court, New York County, on September 14, 1965.

With leave of the court I would read a portion of that order.

(At this point Mr. Bush read portions of Government Exhibit 54 in evidence to the jury.)

Q Incidentally, Mr. Rosen, what was the sum of that judgment?

A I don't recall.

Q Does the area of 25 or 30 thousand refresh your recollection?

A It may have been in that amount.

Q Shortly thereafter, Mr. Rosen, did you file a petition in bankruptcy?

A Yes, sir.

MR. BUSH: I would ask that this document be marked for identification as Government's Exhibit 55.

(Government Exhibit 55 marked for identification.)

Q I show you Government's Exhibit 55 for identifica-

tion, Mr. Rosen, and ask you to examine that document and tell me whether that is the petition in bankruptcy you filed together with the schedules of debts and assets attached thereto?

A This looks like it, yes, sir. This would appear to be it, yes.

Q Is that it?

A I would say yes.

Q Look at all the pages and make sure they all belong there.

A I would say yes.

MR. BUSH: I would offer Government's Exhibit 55 into evidence.

MR. HOEY: I have no objection to this, your Honor.

xxx (Government Exhibit 55 was received in evidence.)

MR. BUSH: With the permission of the court I would point out to the jury that this particular petition was filed the 4th day of October 1965.

Q Mr. Rosen, what did you have in the way of assets at the time you filed this petition? Roughly that is.

A I have no idea. What does it state in here?

Q You tell me, was it less than 1000 or more than $1,000.

A I don't recall what it was.

Q Was it less than $10,000 or more than $10,000?

A That I had in net assets myself?

Q That is right, at the time this petition was filed.

A I would say it was very minimal.

Q Go ahead and refresh your recollection by looking at the petition itself.

The second half of the petition details the assets.

I think the bottom portion is the assets, is it not?

A No assets. Wearing apparel and personal effects.

Q What was the total assets?

A $301.57.

Q In connection with this bankruptcy proceeding, Mr. Rosen, did you attempt to stay payments of these $50 each week?

A Yes, sir.

Q Were you successful in staying them?

A No, sir.

MR. BUSH: I would ask that this document be marked for identification as Government Exhibit 56.

(Government Exhibit 56 marked for identification.)

Q Is this the order relating to the Matasow and Howard judgment against you?

A I don't understand the question.

Q Was it less than $10,000 or more than $10,000?

A That I had in net assets myself?

Q That is right, at the time this petition was filed.

A I would say it was very minimal.

Q Go ahead and refresh your recollection by looking at the petition itself.

The second half of the petition details the assets.

I think the bottom portion is the assets, is it not?

A No assets. Wearing apparel and personal effects.

Q What was the total assets?

A $301,57.

Q In connection with this bankruptcy proceeding, Mr. Rosen, did you attempt to stay payments of these $50 each week?

A Yes, sir.

Q Were you successful in staying them?

A No, sir.

MR. BUSH: I would ask that this document be marked for identification as Government Exhibit 56.

xxx (Government Exhibit 56 marked for identification.)

Q Is this the order relating to the Matasow and Howard judgment against you?

A I don't understand the question.

Q Is this the order relating to your attempt to stay the Matasow and Howard judgment against you? Is that the order that ultimately resulted?

A I don't know from this.

Q Would you read the last paragraph and see if that refreshes your recollection?

A "This day" --

Q To yourself, Mr. Rosen. See if it refreshes your recollection.

A What is the question?

Q Is that the order that resulted from your attempt to stay these $50 per week payments?

A I assume so, yes.

MR. BUSH: I would offer Government's Exhibit 56 into evidence.

MR. HOEY: Your Honor, may I have the last two questions read.

THE COURT: You mean the answers as well as the questions?

MR. HOEY: The questions and answers in regard to this.

(Record read.)

MR. HOEY: I have no objection to it now.

xxxx (Government's Exhibit 56 received in evidence.)

MR. BUSH: With the permission of the Court, again, I read the relevant portion of this document to the jury.

(Portion of Government's Exhibit 56 read to the jury.)

Q By the time this order was entered on October 13, 1965, Mr. Rosen, had the attorney for these two individuals moved to punish you for a contempt the second time?

A I don't know.

Q Does it refresh your recollection by calling to your attention the fact that such a -- withdrawn.

Would it refresh your recollection by calling to your attention the fact that an order to show cause had been served upon you, in light of your refusal to pay the sums

that had been set out in that earlier contempt order?

A No. All I do know is that they were paid, all of them, to the lawyer.

Q In fact, Mr. Hanger made those payments, did he not?

A Yes, sir.

Q When were you discharged from bankruptcy, Mr. Rosen?

A I don't have the exact date. Probably about a year or so later.

Q It was not immediately, was it?

A Probably about a year or so.

Q What was the reason for the delay in the discharge?

MR. HOEY: I object to that, your Honor.

THE COURT: Yes. I think we have gone far enough on this subject, Mr. Bush.

MR. BUSH: Let me just establish the date, if I might.

Q I show you some docket entries on the last page thereof and ask you if that refreshes your recollection as to when you were discharged from these bankruptcy proceedings.

A 5/11.

Q 5/11 of what year?

A 5/11/67. January, February, March, April.

Q That would be May 11 of 1967?

A May 1967, yes, sir.

Q Does Mr. Bertoli know your wife, Mr. Rosen?

A Yes, sir.

Q You stated that you had nothing to do with record keeping in Mr. Hanger, is that correct?

A That's correct, sir.

Q I take it that this was Mr. Bertoli's area of control?

A Yes, sir.

Q Did you have anything to do with the accounting policy of the company?

A Well, as to how they affected the overall financial operations of the company, I would say yes.

Q Who had the ultimate say in connection with accounting problems for Mr. Hanger on how they were treated?

A Mr. Bertoli.

Q Was Mr. Bertoli in a position to make policy decisions on behalf of Mr. Hanger?

A Yes.

Q How long did he remain in such a position?

A Up until the time that he left. That was one of the reasons for his leaving.

Q Excuse me?

A That was one of the reasons for his leaving.

Q So up until the time he left he was in a position to make policy decisions.

A Yes, sir.

Q Is that correct?

A Yes.

MR. BUSH: I would ask that this document be marked for identification as Government's Exhibit 57.

(Government's Exhibit 57 marked for identification.)

Q Mr. Rosen, I show you what has been marked for identification as Government's Exhibit 57. I ask you, is that your signature there?

A Yes, sir.

MR. BUSH: I would offer into evidence at this point Government's Exhibit 57.

THE WITNESS: I actually didn't have a chance to take a look at it. You whipped it back and forth. I would like to take a look at it.

Q I will return it, sir.

A Thank you.

MR. HOEY: I have no objection.

(Handed to the witness.)

THE WITNESS: Yes.

MR. BUSH: Is there any objection?

MR. HOEY: I have no objection, your Honor, except that I had never seen a copy of that before, even though discovery had been requested.

THE COURT: I think the question really before the house is this --

MR. HOEY: I have no objection to it.

THE COURT: Whether or not you have any objection.

MR. HOEY: No, your Honor.

xxx (Government's Exhibit 57 received in evidence.)

MR. BUSH: With leave of the Court, I would read a portion of Government's Exhibit 57 to the jury.

(Portion of Government's Exhibit 57 read.)

Q I show you Government's Exhibit 9A, which has been admitted into evidence, and ask you if you have seen -- withdrawn -- whether apart from the year to which this applies, you have ever received a form 1099 before, or after?

A Oh, I am sure I must have.

Q In other words, you are familiar, are you not, with what a form 1099 represents?

A Yes, sir.

Q This represents money to you from the firm that is indicated on that particular form, does it not?

A Yes, sir.

Q In this particular form it reads that the moneys

received from Mr. Hanger, Inc., does it not?

A Yes, sir.

Q And that pertains to the calendar year 1966, does it not?

A I believe so, yes, sir.

Q Mr. Rosen, I show you Exhibit 1 and I ask you, is this the tax return that was just waved in front of you and you signed it without reading, really?

A Yes.

Q Was it waved in front of your wife and she signed it without reading it as well?

A No, that's my signature for my wife.

Q You signed both you and your wife's signature?

A Yes, sir.

Q To this particular tax return?

A Yes, sir.

Q Did you read the section that says, "Under penalties of perjury I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true"; did you read that statement?

A No, sir.

Q But you signed that particular tax return for your wife, is that correct?

A I've signed each and every tax return for my wife since the day I have been married.

Q Are you thoroughly familiar with your wife's personal finances, Mr. Rosen?

A Yes, other than very, very limited private account that she may have.

Q Did you ask Mr. Bertoli at the time you had this tax return waved in front of you why he had not signed it as a preparer?

A I didn't have any knowledge that he did not sign the return.

Q You did not see his name on the return, did you, when you signed it?

A I didn't look for it. I assumed that he would have put his signature on it if required when he was ready to mail it.

Q But the line where the words "where preparer other than taxpayer" appear is the line immediately below your signature, is it not?

A Why wouldn't he have signed it after me and mailed it? That is what a normal accountant would do. You would put your name down, you would hand it to him, and then he--

MR. BUSH: Your Honor, I ask that the witness be directed to answer the question put to him.

THE WITNESS: I am sorry.

Q Where is the line where the tax preparer's signature appears?

A Directly under the one that I signed. By the way, I had the power of attorney for my wife to sign her signature.

Q Did you bring that power of attorney into court here with you today?

A No, sir. My wife is --

Q Do you know where it is?

A Do I know where it is?

Q Yes, sir.

A I don't know. I haven't used it in many years. My wife happens to be in a mental institution.

MR. BUSH: Your Honor, I ask that the witness' last answer be stricken as unresponsive.

Q Mr. Rosen, as of March 1968, did you own any stock in Mr. Hanger?

A No, sir.

Q When did you first purchase the stock in Mr. Hanger?

A I believe around that time.

Q Was it before March or after March 1968?

A During March.

Q Was it before March 13th or after March 13th?

A I am not certain of the exact date. Oh, wait a second. I think that a contract to buy -- I don't even remember the date.

MR. BUSH: I would ask that this document be marked for identification as Government's Exhibit 58.

(Government's Exhibit 58 was marked for identification)

Q Mr. Rosen, I ask you if you signed that particular document.

A That is my signature, sir.

Q Do you want an opportunity to look at it?

A May I?

Q Go right ahead.

A Okay.

MR. BUSH: I would offer into evidence Government's Exhibit 58.

MR. HOEY: I have no objection.

(Government's Exhibit 58 received in evidence)

Q Is the statement contained in this document true, Mr. Rosen?

A I believe it to be true, yes.

Q It was signed before a Notary Public, was it not?

A Yes.

Q And that Notary Public, or at least it was attested to, and who was that?

A By the secretary of the corporation.

Q And that is?

A Oh, and Benjamin Zuckerman also, and the secretary of the corporation.

Q Does your name appear among those of the stockholders of the corporation as of the date appearing on that document?

A No, sir.

Q And that is March 13th of 1968, is it not?

A That's correct, sir.

MR. BUSH: I would ask that this document be marked for identification as Government's Exhibit 59.

(Government's Exhibit 59 was marked for identification)

Q Mr. Rosen, I show you Government's Exhibit 59 for identification and ask if you can identify that particular document.

A This is a 1972?

Q The document is dated.

A What was your question?

Q Can you identify that document?

A I believe that was the document prepared by Mr. Hoey.

Q Mr. Rosen, did you sign this particular document?

A Yes.

Q Was it filed with the Securities and Exchange Commission?

A Yes, sir.

MR. BUSH: At this time I would offer Government's Exhibit 59 into evidence. Any objection?

MR. HOEY: No.

(Government's Exhibit 59 was received into evidence)

MR. BUSH: With the leave of the Court, I would ask permission to read the relevant portion of this document.

MR. HOEY: Your Honor, at this time I will state that the whole attachment is relevant to whatever --

THE COURT: I am sorry, I cannot understand you.

MR. HOEY: I said that the whole attachment to which he is going to read would be the relevant part, not just --

MR. BUSH: Mr. Hoey, of course, is free to read any portion he wishes to read subsequent.

THE COURT: Yes.

(Portion of Government's Exhibit 59 was read to the jury.)

Q When did you first start to receive payments from Intercontinental Hangers, Mr. Rosen?

A I believe in March.

Q I cannot hear you.

A Excuse me. I believe in March 1967.

Q When was the last of those payments made?

A They went up through April 1968, I believe.

Q Did there come a time when there were payments made to the Southern New England Telephone Company?

A There may have been one check. I am not -- yes.

Q And that would have been in payment, would it not, of your phone bill?

A A portion of it.

Q And that would be your phone bill from your house in Connecticut, would it not?

A I believe so.

Q There was also a check made out to certain movers, was there not?

A I believe there was one check made out to the Day and Mayer Moving Company for $400-odd and charged to my loan account.

Q And that was in payment for your move from -- part payment for your move from New York to Connecticut, was it not?

A I am not certain.

Q In any event, it was in payment for one of your personal expenses, was it not?

A Yes, sir, it was.

Q In addition, there is a check here payable to a bank, I believe, Michigan Avenue National Bank; is that correct?

A Yes, sir.

Q Was that check or the amount thereon in payment of a personal loan that you had from that particular bank?

A I am not certain that that is a fact. I do know that I had a loan from the bank. It may very well have been in line of Hanger business, which I had done in the past.

Q Would you look at the check payable to the Michigan Avenue National Bank and tell me the amount of that particular check.

A $488.35 -- $458 is that?

Q $458, is it not?

A $458.35. Yes, sir.

MR. BUSH: I would ask that this document be

marked for identification as Government's Exhibit 60.

(Government's Exhibit 60 was marked for identification)

Q I show you Government's Exhibit 60 for identification and ask you if you can identify that particular document.

A Yes. This is a note signed by me for the Michigan Avenue National Bank for $11,000 payable at $458 per month.

Q $458.35 per month, is it not?

A Yes. Yes, sir, that's correct.

MR. BUSH: I would offer this particular document into evidence. No objection?

MR. HOEY: I do have an objection, yes. My objection is that pursuant to certain discovery to which we were entitled we were supposed to be shown all the documents -- may I approach the side bar?

THE COURT: You say you have an objection you want to give up to me at the side bar?

MR. HOEY: Yes, your Honor.

THE COURT: All right.

(At the side bar)

MR. HOEY: Your Honor, in accordance with the procedures, we had agreed that discovery would be made

available and it would be continuing. I have never seen this document before, and I think that the least the government could have done was to show it to me.

THE COURT: I don't quite understand you on two grounds. I don't recall your ever getting any court order to the effect that this kind of document had to be produced; second of all, I cannot assume that the government would have produced this in any event, especially because it is a document which would be peculiarly available to the defense, in any event. I don't quite understand you.

MR. HOEY: Your Honor, we had made an agreement with counsel for the government that we would have complete disclosure of any discoverable material.

THE COURT: I say I am not sure this was discoverable material or, if it was, it was never so brought to the Court's attention, and the Court was never asked to direct such kind of discovery.

MR. HOEY: All right, I will withdraw my opposition.

(In open court)

THE COURT: The objection is overruled. Exhibit 60 can be received.

(Government's Exhibit 60 received in evidence)

MR. BUSH: With the leave of the Court, once again I will just read the relevant portion of this document. It is a loan note from the Michigan Avenue National Bank of Chicago. The loan is for the sum of $11,400 -- apparently 40 cents. In successive weekly equal installments, each of $458.35.

MR. HOEY: May I see that, please?

MR. BUSH: You want to see it? Do you want to receive this document as well, your Honor?

THE COURT: No. I want to know if you have any more questions.

MR. BUSH: Yes, sir, I do.

THE COURT: Can you tell me approximately how long?

MR. BUSH: I anticipate another twenty minutes or thereabout.

THE COURT: Let us go along for a while, then, and see what happens.

Q Mr. Rosen, when you initially received these payments from Intercontinental, did you ever sign a loan document?

A Initially, no.

Q Did you ever at any time sign a loan document?

A Yes, sir.

Q Where is that particular document?

A That would be somewhere in the record, Mr. Hanger, I presume, and I signed them in 1968, 1969, '70, '71, '72, for all the accounting people.

Q I am talking about the confirmation.

A That is a confirmation of the loan amount.

Q But it is not a loan agreement in and of itself, is it?

A Oh, not in regard to repayment, no,sir.

Q Is there any amount of interest that you agreed upon to repay to Mr. Hanger together with this loan?

A Not a penny.

Q Was there any date ever set to repay this loan?

A None.

Q At this time I show you a document marked for identification as Government's Exhibit 25.

A Yes.

Q I ask you if you can identify that particular document.

Is that your signature upon it, Mr. Rosen?

A I didn't have a chance to read it. May I just have another minute?

Q Certainly.

A Yes, sir, this is my signature, and this letter

I wrote to the accountant.

MR. BUSH: I offer Government's Exhibit 25 into evidence. No objection?

MR. HOEY: I have no objection.

(Government's Exhibit 25 received in evidence)

(Government's Exhibit 25 was read to the jury.)

Q During 1970 did you begin to repay any portion of this loan, Mr. Rosen?

A No. As a matter of fact, the opposite: I borrowed more money.

Q Did you pay any portion of this loan back prior to the date of the indictment in this case?

A No, sir, not a penny. I continued to borrow substantially more money every month thereafter, before the indictment and after it. I am not sure after it.

Q Mr. Rosen, as of March 15, 1968, when the firms of Mr. Hanger and Yankee merged, you represented, did you not, that Mr. Hanger had $150,000 in the way of net assets on that date?

A I understand that is an agreement to that effect.

Q As part of the assets transferred to Mr. Hanger --

withdrawn -- as part of the assets transferred to Yankee -- withdrawn again.

Was Intercontinental to be part of the assets transferred to Yankee?

A Yes, sir.

Q Initially, as of March 15, 1968?

A I don't know if it was discussed in the context of the contract, because the assets basically of Intercontinental were these loan areas. But it had a good potential, and its interest in Mr. Hanger of Quebec, I felt, could be quite valuable, although there wasn't any substantial net worth of any significance in regard to the statement of Intercontinental.

Q In fact it was specifically excluded from the bill of sale in connection with that merger, was it not?

A Well, it may have been excluded. I don't know about the specifity of it.

Q When was it actually transferred?

A I don't know the exact time.

Q Was it on March 15, 1968?

A No. I think that is what you are referring to, are you not, March 15, 1968?

Q Was it on that date that Intercontinental was transferred over to Yankee?

A I would have no way of knowing the date.

Q Was it in 1968 at all?

A Was what?

Q That Intercontinental was transferred over to Yankee Plastics.

MR. HOEY: Your Honor, I am going to object to this on the ground of relevancy. What is the relevancy of this to the charges we are now facing?

THE COURT: I understand you and at the moment I think we have not really developed this, but since this, I take it, is going to be getting to this loan business --

MR. BUSH: These payments, that is correct, your Honor.

THE COURT: I will take it subject to connection, assuming that that is what we are getting at, which I can understand. Go ahead.

Q Was the firm of Intercontinental Hangers, Ltd., transferred over to the new merged concern at Yankee in 1968?

A I believe it may have been.

Q Is that the best of your recollection at this point in time?

A Yes.

Q Could it have happened late in 1969?

A Sure.

Q If it had happened late in 1969 -- withdrawn.

MR. BUSH: I ask that this document be marked for identification as Government's Exhibit 61.

(Government's Exhibit 61 was marked for identification)

Q I show you what has been marked for identification as Government's Exhibit 61 and ask you if that refreshes your recollection as to when the actual transfer took place.

A It may have been. This was sort of a routine boilerplate sort of a meeting, and I don't remember too much about it.

Q Does it refresh your recollection as to when the transfer actually took place?

A Well, I will read the date for you right here. It's 8 September '69.

Q I take it that refreshes your recollection as to when the transfer took place?

A I really don't know. I don't remember the document, frankly.

THE COURT: Mr. Bush, before I ask you: You probably will have some redirect, will you, Mr. Hoey?

MR. HOEY: I may, your Honor, yes.

THE COURT: I wonder if we could agree that maybe we ought to break now until Monday morning, and there is something that I want to take up with counsel thereafter. Would that be all right with you, Mr. Bush?

MR. BUSH: Very well, your Honor.

THE COURT: All right with you, Mr. Hoey?

MR. HOEY: Yes, your Honor.

THE COURT: Mr. Charon, ladies and gentlemen, we will suspend now and go over until Monday morning. Remember, you don't have to come near this building tomorrow at all. You are free to go about your own business tomorrow. We will pick up at 10:00 o'clock on Monday morning, and I believe we will finish the proof that morning and commit the case to you around the middle of the day, I propose.

So the case is not quite over yet. I ask you to put it out of your mind entirely over the weekend. I hope that you have a pleasant one, and we will see you Monday morning a few minutes before 10:00 in the jury room. Good night.

(The jury left the courtroom)

THE COURT: Do you want to step down, Mr. Rosen?

THE WITNESS: Yes, sir.

(Witness excused)

THE COURT: First of all, I want to acknowledge receipt of the government's request to charge last evening. I will rule on them as quickly as we finish the proof.

Second of all, are you still -- I take it that the defense will be calling no other witnesses?

MR. HOEY: I don't anticipate. I have already cut out several and sent them home today, your Honor.

THE COURT: I remind you there was talk about re-calling Mr. Bertoli but perhaps you don't need that reminder. For the moment I will assume you choose not to recall him or call any other witnesses.

MR. HOEY: Yes, sir.

THE COURT: Mr. Bush, are you still serious about offering any rebuttal here?

MR. BUSH: I have had several rebuttal witnesses sitting downstairs all day.

THE COURT: Fine.

MR. BUSH: I would re-think that. If I have any rebuttal at all it would be very, very short. I would just have to think about it over the weekend, your Honor.

THE COURT: I am going to alert you and Mr. Hoey and Mr. Busoff to this fact: I always ask the government to make an offer of proof before I willy-nilly go down the road with rebuttal. So be prepared to succinctly

make an offer of proof after the defense rests, if that is really what you want to do.

Then we will decide whether or not we have rebuttal.

If the defense has any requests to charge I want to see them as quickly as I can see them. If the defense has any objections to the government's requests, why, I would like to know those at some appropriate point.

Are you with me?

MR. HOEY: Yes, your Honor.

THE COURT: Very good.

Have a pleasant evening and I will see you tomorrow.

MR. HOEY: I do have some, your Honor, and I would like the opportunity to submit three short cases to your Honor. Those are the general type that I have drafted and they will be into your office tomorrow morning.

THE COURT: Surely. If you want to submit anything else tomorrow morning or Monday for that matter, that is fine.

MR. HOEY: The others will deal --

MR. BUSH: Might I be supplied with those?

MR. HOEY: Surely, I'm sorry.

I will supply Mr. Bush with them tomorrow as to

what they are.

THE COURT: Very good.

(Trial adjourned to Monday, March 4, 1974 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Conrad Ekert	417			
Sidney Gelfand	450			
Paul Lawrence Rosenrauch	472	522		

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jgk

United States of America

vs. 73 Cr 408

Paul Lawrence Rosenrauch

New York, N. Y.
March 4, 1974 - 10:00 a.m.

(Trial resumed.)

(In open court - jury present.)

P A U L L A W R E N C E R O S E N R A U C H,

having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: Good morning, ladies and gentlemen. I think we are ready to proceed.

Mr. Bush.

CROSS EXAMINATION CONTINUED

BY MR. BUSH:

Q Mr. Rosen, in your testimony on Thursday you used the term "net worth. Would you mind explaining briefly to the Court just what that means?

A It would mean the bookkeeping entries that reflected that you have more assets dollar-wise on the books than you have more liabilities on the books.

Q In other words, it is the amount of assets in excess of the amount of liabilities, would that be correct?

A Not necessarily, only as to how it refers to the

books and records. You can have a car that you bought for $5,000 -- or that may be a bad illustration.

You can have a piece of equipment that you bought for $5,000. You depreciate it over a period of three years, maybe $1500 a year. In the last year you have that on your books for maybe $1500. That piece of equipment could be worth $15,000.

Q In other words, it is an accounting concept, is that correct?

A I believe that to be correct.

Q In the accounting sense it is the book value of the assets in excess of liabilities, is it not?

A Yes, technically I think that is a better explanation.

Q I show you Government's Exhibit 22 in evidence and I ask you if the payments that you received from Intercontinental together with the three other individuals who received payments, which have been placed on this balance sheet as loans, were eliminated as loans, what effect would that have on the net worth of Intercontinental?

A It would be reduced by that amount. If it were eliminated it would be reduced by that amount.

Q Using Government's Exhibit 22, roughly what would the net worth of Intercontinental have been as reflected

on that statement if those loans were eliminated?

MR. HOEY: I am going to object to this. I don't see the relevancy of it. I don't see the materiality of it as far as this case is concerned.

THE COURT: Since I don't have a copy of the document, I am fettered in casting any judgments here.

I must say, I am a little puzzled, Mr. Bush. What has this got to do with this? I don't quite get what you are getting at.

MR. BUSH: If your Honor wants I will make an offer of proof atthe side bar on it.

THE COURT: What part of this balance sheet, so-called, do you want to get into? I am totally puzzled. Since this trial is about through, can't we get down to whatever is important and eschew what is not?

MR. BUSH: I believe this question, and perhaps one or two others, are the only ones I would have on this particular subject matter.

THE COURT: There must be some point. I will let you go on subject to connection and see what happens.

(Question read.)

A I really can't tell from here.

Q What is the total amount of the loans?

A The total amount of the loans is 25,000 --

Q Plus 5,000.

A Approximately 31 and a half thousand dollars.

Q What is thenet worth of the balance sheet as it stands at present?

A 61,000.

$2,811. No, that is earnings.

Isn't that earnings for the year? Retained earnings.

Q Returning to our definition, the liabilities of this company --

A I am not an accountant, frankly.

Q Is it your testimony that you wouldn't know?

A No, I really would not. Technically I don't understand that.

Q Mr. Rosen, for the year ending January 31, 1967, that fiscal year, had Mr. Hanger made any money?

A I don't really recall the statement, Mr. Bush.

Q Let me show you an exhibit that has been marked for identification as Government's Exhibit 35 and I direct your attention to the income statement portion of that particular exhibit and I ask you if that refreshes your recollection?

MR. HOEY: I am going to object to this with regard to relevancy also, as to what Mr. Hanger made or did not make

That is not part of this case.

THE COURT: I take it this document has soemthing to do with either '66 or '67, Mr. Bush?

MR. BUSH: It is the fiscal year ending January 31, 1967.

THE COURT: Go ahead.

A You have here what they call an operating loss for the year of 102,000, deficit at the beginning of the year, 31,000 or a total deficit up to that period of $133,000.

But that is an operating loss and you can't take an operating loss to try to prove the point you want. You have to take the amount of the depreciation that adds back the money into cash flow. You have to take back the amount of interest you paid in order to establish whether you have a profitable business because at some point the same exact business that you did in the period one year that could show an operating deficit because you are paying a high interest rate, your equipment is new, is different than the amount of -- different than the results of the operations in another year.

In other words, if I had that machine paid off of $10,000 I have no charge against earnings for that year of $10,000. So you are trying to portray here that the company is operating in the black as some sort of a bad connotation.

We were just building the business during these yars and as a result of that during the early years you have the losses and during the later years, if you do good, you make them up.

MR. BUSH: I would ask, your Honor, that the witness' last answer be struck as unresponsive.

THE COURT: Yes. We will have the question repeated and I want you to listen carefully, Mr. Rosen.

(Question read.)

A Only as to the statement, on this particular page --

Q As reflected on that statement --

A On this particular page.

Q What was the profit or loss --

A $102,000, $102,638 reflected only on this page.

Q That was the sum of money that, according to this particular statement, had been lost by Mr. Hanger for the fiscal year then ending?

A Yes.

Q And this document, I take it, was the financial statement of Mr. Hanger for that particular year, was it not?

A Yes, sir.

Q And it was prepared by the firm of Haskins & Sells?

A Yes, sir.

Q For the fiscal year ending January 31, 1968 had Mr. Hanger made a profit or a loss as reflected in the

financial statements prepared for that particular fiscal year?

A I believe it had an operating loss.

Q How much was the loss for that particular year?

A I don't recall. Why don't you show me the document?

Q I show you a document that has been marked for identification as Government's Exhibit 18. I direct your attention again to the net income portion of that particular document and ask you whether that refreshes your recollection as to the net profit or loss of Mr. Hanger for that particular fiscal year?

MR. HOEY: I renew my objection on the grounds of relevancy.

THE COURT: I respectfully disagree. I am going to allow this.

A Once again, I say only as it appears on this one sheet in front of me in the amount of $67,729. I am not very good at reading these. $117,464.

Q That was the loss for the fiscal year ending January 31, 1968?

A For the year ended January 31, '68, yes.

Q For the period between January 31, 1968 and March 15 of the same year what if any profit or loss is reflected on the financial statements for that particular period of time

had Mr. Manger made?

A Is this the page you are referring to?

Q I direct your attention specifically to refresh your recollection to the net income page of a document marked for identification as Government's Exhibit 18A.

A I didn't understand you.

Q That is the page to which I am directing your attention.

A We lost $5,120.

Q In addition, were there other losses for that same period?

A You have interest and finance charges, factoring agreements which was a charge of $13,000, start-up costs, $2400, design and development costs, that is engineering, $547 --

Q What was the total loss for that period of time?

A Including the $5,120 it would be $16,324 -- no, excuse me, $16,324 in addition to the $5,120 for a total of $21,444.

Q During 1966, Mr. Rosen, was the Progressive Drug Company a national or a local concern?

A I think basically it was a local distributing company.

Q Where was it located?

A In the Bronx.

Q Where were its customers located?

A Primarily in the five boroughs of New York.

Q To your knowledge, had it ever done business outside of the New York City area to that point?

A I think it had but minimal, I think.

Q But minimal?

A I think.

Q If any at all?

A I don't know about any at all, I think it was minimal.

Q During 1966 would it be a fair statement that you were extremely busy with the affairs of Mr. Hanger?

A Moderately so.

Q Moderately so?

A I guess more than that. I was very much involved from the minute I got up in the morning until the time I went to bed with the affairs of Mr. Hanger and others.

Q Predominantly with Mr. Hanger, would that be so?

A I don't want to make a judgment on that. I don't know how to measure my hours that way.

Q During the fall of that particular year did there come a time when there were certain questions concerning your 1965 income tax return?

A I believe there was.

Q And did these questions center on your travel and entertainment expenditures for that year?

A I believe they did.

Q Did you in fact tell the IRS in the fall of that particular year that you were too busy to go down to the local Internal Revenue Service office either to answer their questions on that but preferred instead that they come out to Long Island City where the officers of Mr. Hanger were located?

A That is twisting it a little actually. Technically the letter may have said that but the fact was the letters were at Hanger and if they wanted to see them it was best that they come up to the office where all the records were.

MR. BUSH: I would ask this document be marked for identification as Government's Exhibit 62.

(Government's Exhibit 62 marked for identification.)

Q Mr. Rosen, I show you the document marked for identification as Government's Exhibit 62 and ask you if you signed that particular letter?

A Yes, Mr. Bertoli prepared it and I signed it.

Q Have you had a chance to look at it?

A I saw it a few minutes before.

Q I see.

A Let me read it just once again. Yes.

MR. BUSH: I would offer Government's Exhibit 62 into evidence.

MR. HEOY: May I have a slight voir dire on this?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. HOEY:

Q I show you Government's Exhibit 62 for identification and ask you, the crayon mark or ink mark in red, was that on the letter at the time you sent it?

A I doubt it.

MR. BUSH: If there is any question about that I would just read the letter to the jury rather than handing the exhibit to them.

MR. HOEY: I have no objection.

(Government's Exhibit 62 received in evidence.)

MR. BUSH: With leave of the Court I would read Government's Exhibit 62 tothe jury.

THE COURT: Yes.

(At this point Mr. Bush read Government's Exhibit 62 in evidence to the jury.)

Q During the mid-1960's, Mr. Rosen, you were an experienced businessman, were you not?

A I hope I was. Not always successful but experienced.

Q And you knew that expenses were to be charged rather than paid for by cash, did you not?

MR. HOEY: I object to this.

THE COURT: Yes, I am inclined to sustain that objection as to form.

MR. BUSH: I will reframe the question.

THE COURT: I think you better.

Q Was it your practice then to charge expenses rather than to pay for them in cash?

MR. HOEY: Your Honor, I object to this as repetitious. We had this all Friday afternoon.

THE COURT: We have had it quite a bit. I quite agree with that. I have another problem. Are you asking in respect --

MR. BUSH: His practice.

THE COURT: His practice for Mr. Hanger or other companies? I am not quite with you.

MR. BUSH: His practice for the companies with which he was associated or worked.

THE COURT: At this late stage in the trial, Mr. Bush, I think you can do better than that.

Which company do you have in mind?

MR. BUSH: I would assume, your Honor, that I can ask generally and then ask him specifically.

500A

THE COURT: I know, but we are going on without much point. It might benefit you if you would respond to my question.

MR. BUSH: Let me narrow it down.

THE COURT: I think you should.

Q Did your practice with respect to your expenditures for travel and entertainment vary from the companies that you were either associated with or worked for?

A Yes, sir.

Q In what sense did they vary?

A Well, on some occasions, like with Progressive Drug, when I spent money with cash, I got cash back.

Q How did you handle it with respect --

A On some occasions I used a credit card. On those occasions I used a credit card, I didn't get the money back.

On some occasions I had a receipt. On some occasions I didn't.

I happen to be a very sloppy bookkeeper personally and that is the reason I am sitting here.

Q Did your practices vary from company to company?

A I think it was just my whole general business principles that was sloppy.

Q But your practices were the same then, I take it, between the various companies with which you were associated?

A Essentially I would say that would be the prevailing thing, yes.

Q During the period beginning in the early 1960's and culminating in 1966, did you make it a practic e to use cash or to charge your business expenses?

MR. HOEY: I object. We have already gone through this, your Honor.

THE COURT: I had thought so too.

As I understand you, Mr. Rosenrauch, you say you did both, is that a fair statement?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Did there come a time when you testified in connection with certain proceedings before the Securities and Exchange Commission?

A Yes, sir.

Q During the course of your testimony there, was there a discussion concerning the circumstances surrounding your personal bankruptcy?

A I don't recall.

Q Was there a discussion during the course of your testimony there concerning your salary and expense money at the old firm of Yankee Plastics?

MR. HOEY: I am going to object to this in regard to relevancy.

THE COURT: I think we are leading up to something. Go ahead.

A I don't know. If you show me some of the records, I will read them. I don't remember.

Q More specifically, in the course of your discussions concerning your salary and expenses, did you have occasion to say that your expenses, you have a Diners Club card, you don't get cash?

A I may very well have said that.

MR. BUSH: I ask this document be marked for identification as government exhibit 63.

(Government Exhibit No. 63 marked as an exhibit for identification.)

Q Directing your attention to the bottom of page 65 and then on to the top of page 66 -- bottom of page 25, I am sorry, and then to the top of page 26 --

A Let me read it first.

What is the question?

Q The question is: did you, in the course of discussions say that with respect to the $200 that you were receiving in the way of expenses, that you charged those expenses rather than use cash?

A Well, from the record, which is really all I have in front of me here, I wouldn't be able to answer that question. It says, your expenses, you have a Diners Club card, you don't get cash.

Q Were you the witness?

A Yes.

Q Did you say that?

A I don't remember the specific words.

Q Did your attorney in the preceding sentence ,or the preceding paragraph, set out that you were getting a salary of #200 a week and expenses of $500 a week?

A No. An additional $200.

Q An additional $200. Did you in response to that particular question say, "your expenses, you have a Diners Club card, you don't get cash?"

A I don't know what "your expenses" -- it is not English, I don't understand it.

In other words, don't try to pin me down if the word isn't clear.

MR. BUSH: No further questions.

THE COURT : Any redirect, Mr. Hoey?

MR. HOEY: Yes, your Honor.

REDIRECT EXAMINATION BY MR. HOEY:

Q Mr. Rosenrauch, you stated that in 1965 you filed a petition in bankruptcy, October 5, 1965, is that correct?

A Yes, sir.

Q Sir, were you discharged from bankruptcy on May 11, 1967?

A Yes, sir.

Q I show you this and ask you -- well, let me mark it.

(Defendant's exhibit O marked for identification.)

Q I ask you if you recognize that?

A Yes, this is my discharge of May 11, 1967.

MR. BUSH: No objection.

(Defendant's exhibit O for identification received in evidence.)

MR. HOEY: May I just read the pertinent part?

THE COURT: Go ahead.

(Defendant's Exhibit O read.)

Q I believe you you testified on cross-examination that you were held in civil contempt in a previous action prior to this, is that correct?

A Yes, sir.

Q Would you kindly explain the circumstances leading up to that, sir?

A I had been a guarantor -- that judgment came about that I was a guarantor on an agreement and the attorney that was questioning me was a personal -- we had a personal relationship together. He knew that m y wife had an illness and she had made two attempts at suicide during the previous year and he had questioned her --

MR. BUSH: I am going to object to these personal facts. They are not relevant to the proceedings here.

THE COURT: You are a little late but I will sus-

tain the objection to this extent. I think you ought to help mr. Rosenrauch, Mr. Hoey, and instead of asking an open-ended question like that, what is it specifically you want to know?

MR. HOEY: It will come at this point, your Honor.

THE COURT: Just a minute, please. Will you please do as I usggest and narrow the question a bit so he can understand what you want?

Q Mr. Rosenrauch, you were held in contempt?

A Yes, sir.

Q And you were ordered to pay a $250 fine?

A Yes, sir.

Q And the court there said you made untrue statements in examinations, is that correct?

A Yes, sir.

Q Did you tell the court why at this point you made that statement?

A Mr. Shaw had just had m y wife remanded to jail on the previous week in civil court with my two daughters, two and three years old in the house, and they were alone for about an hour and a half until my mother got there and certainly after that I would not subject her to any possible questions under any condition from there on in regardless of what happened. I was afraid she was going to go out the

window. That was the reason.

Q Mr. Rosen, was that brought up by the trustee in bankruptcy in the proceeding before the referee?

MR. BUSH: Objection as to whatever relevency this would have to the bankruptcy proceeding.

THE COURT: I don't know what you mean by "was this brought up by the trustee." Rephrase it.

Q Was the contempt brought up by the trustee in bankruptcy before the referee in bankruptcy?

A Yes, sir.

Q And did the referee rule in your favor and discharge you from bankruptcy?

A Yes, sir, he did. And he returned all of the escrow money I had been putting up, $50 a week under that contempt citation for about a year and a half. At the end of that the people that had the judgment were not entitled to that. That was awarded back to me and I paid my legal expenses with that money.

Q Mr. Rosen, on your 1966 return, I believe you testified that was made or prepared by Mr. Bertoli?

A Yes, sir, it was.

Q On the attached sheet there is a listing of income or rather unreimbursed expenses in the sum of $7,800 from Mr. Hanger, is that correct?

A That is correct.

Q Do you know how much you got from unreimbursed expenses from Mr. Hanger during the year 1966?

A Well, I employed Mr. Gelfand to make --

Q Did you know of your own knoweldge or do you know of your own knowledge?

A No, I didn't.

Q Did you have a check made of the records of Mr. Hanger to determine how much you had received in expense money for --

MR. BUSH: Objection as to anything further along the line that Mr. Hoey has so far indicated in this area.

THE COURT: I have such difficulty understanding either of you that I am baffled. Let's go back a moment.

What is it you are really inquiring about?

MR. HOEY: I am inquiring as to whether or not he knew how much he had gotten in 1966 in expense money.

T HE COURT: From whom?

MR. HOEY: From Mr. Hanger.

T HE COURT: I don't know why we have to pursue that. Thatis not part of this charge.

MR. HOEY: I think it is very pertinent. If I can show that he received --

THE COURT: No. I say we have been through this

before with one or two of your other witnesses. If it is that, I quite agree with the government, we are not going into that at this late date. He is not accused of anything with respect to so-called expense money from Mr. Hang er, as I understand it.

Q At the time you signed government exhibit 61 in evidence, did you believe that whatever funds you had received from Progressive Drug were included therein?

MR. BUSH: Asked and answered, your Honor.

THE COURT: All we are doing now is repeating what you asked him on direct.

MR. HOEY: I am trying to lay a foundation.

T HE COURT: You don't have to lay a foundation. This was asked and answered when he was first put on the stand by you last Thursday. We don't have to repeat that.

Can we move along?

MR. HOEY: Yes, your Honor.

Q Mr. Rosen, I show you government exhibit ten in evidence, which is the agreement between Mr. Hang er and Yankee Plastics. Did that agreement encompass the transfer of all the assets of old Mr. Hanger into Yankee PLastics?

A Yes, it did.

Q Did it include Intercontinental Hanger, Inc.?

A It included everything.

Q Mr. Rosen, did Progressive Drug furnish you with a charge card for expense money?

A No, sir. I had no credit card from Progressive Drug Company.

THE COURT: Anything else?

MR. HOEY: There is one other thing I have, your Honor.

Q I show you exhibit 58, which is a certification of the list of the stockholders of record as of March 13, 1968, is that correct?

A Yes.

MR. HOEY: I ask that this be marked for identification.

xxx (Defendant's Exhibit U marked as an exhibit for identification.)

THE COURT: This morning when we marked that other document as O, it should have been marked as T. This document offering now will be marked as U.

Q I show you this and ask you if you recognize it?

A Yes.

Q What is this defendant's Exhibit U for identification?

A This is a transmittal letter to the secretary of the corporation to transfer shares of stock into different

groups of people's names.

Q That is dated March 15, 1968?

A Yes, sir.

MR. HOEY: I offer that in evidence.

MR. BUSH: No objection.

xxxx (Defendant's exhibit U for identification received in evidence.)

(Exhibit read to jury.)

Q I show you government exhibit 57 in evidence. I believe you testified in cross-examination that Mr. Bertoli had a policy-making function in the company, is that correct?

A That is correct, sir.

Q Government exhibit 57 in evidence indicates a list of those people who have no policy making. Will you explain that?

A This is the letter that started the whole problem with Mr. Bertoli and myself. Mr. Bertoli, at the time this letter was typed, I had maybe 100 documents that I was transmitting at that time.

This letter to me very simply meant policy in regard to administrative matters. Pardon me, not administrative matters -- in matters of accounting Mr. Bertoli had the responsibility, the exact same way the day before the merger as he did the day after the merger. His job function did not

change, his duties did not change.

Within a week after this letter was transmitted, Mr. Bertoli in a conversation in my office with the Reprinters Machinery Company had --

MR. BUSH: I object to this continuing discourse.

THE COURT: Yes, I think the question comes now to this, if I understand it, Mr. Rosenrauch: You were asked to give an explanation of this reference in this letter known as Government's 57, right?

THE WITNESS: Yes.

THE COURT: Could you tell us that without repeating a lot of conversations?

THE WITNESS: Would you just ask the question again?

THE COURT: You have been asked by your lawyer, Mr. Hoey, to give an explanation of what that says in there in respect to Mr. Bertoli, right?

THE WITNESS: Yes.

THE COURT: If you just do that without recounting all these conversations.

THE WITNESS: Specifically that Mr. Bertoli did not make the administrative policy. All he made was the accounting policy. This letter here meant just that.

THE COURT: All right. Anything else, Mr. Hoey?

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MR. HOEY: I have one other paper that I would like to introduce into evidence.

(Defendant's exhibit V marked as an exhibit for identification.)

Q I show you that paper and ask you if you recognize that?

A Yes, I have this letter.

Q Do you recognize it?

A Yes.

Q Did you sign that letter dated March 18, 1968?

A Yes.

MR. HOEY: I offer that letter.

MR. BUSH: No objection.

(Defendant's Exhibit V received in evidence.)

(At this point Mr. Hoey read Defendant's Exhibit V in evidence to the jury.)

THE COURT: Anything else?

Q Mr. Rosen, if you had received the monies from Intercontinental Hanger in the year 1967 as salary or as income other than loans do you know how much tax you would have had to pay, additional tax that you would have had to pay?

A I would have had to pay about a $3,000 tax instead of paying $11,000 back.

Q And you did in fact pay the $11,000 back to Mr. Hanger?

A That is correct. In other words, if that had been charged as salary I only would have to pay about 30-odd

percent, which would be $3,000.

Q Instead of which you paid 100 percent of the loan, is that correct?

A I had to, it was on the books and records.

THE COURT: All right, Mr. Rosen, step down.

MR. BUSH: I have one or two questions, your Honor.

THE COURT: I think that is enough. We have gone on considerably and I think that is enough.

You may step down.

(Witness excused.)

MR. HOEY: May we take a two-minute recess, your Honor? I have another witness and then I will be through.

THECOURT: Let's bring on another witness.

MR. HOEY: That is not my problem.

G E O R G E P A N D O L F O, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOEY:

Q Mr. Pandolfo, what is your business or occupation?

A I am executive vice president of Mr. Hanger at this moment.

Q Prior to being connected with Mr. Hanger were you connected with any other concern?

jqkl

AFTERNOON SESSION

2:00 p.m.

(In open court - jury not present.)

THE COURT: Gentlemen, according to our information it is Juror Number 7 who is missing, now some ten minutes late.

(Pause.)

(In open court - jury present.)

THE COURT: Ladies and gentlemen of the jury: As you approach the problems of this important task of citizenship please keep in mind that it is your duty to weigh the evidence calmly and dispassionately without sympathy or prejudice for or against either the defendant, Mr. Rosen, or the prosecution. As I think you all understand our system of jurisprudence defines the duties of the judge on the one hand and the duties of the jury on the other.

It is exclusively the function of the judge to set forth the rules which govern the case with instructions as to their applications. On these legal matters you should take the law as I give it to you in the next few moments and you will not concern yourselves with statements as to the law, if any, which counsel have made in their summations or at any other point during the course of the trial.

For what I am sure are perfectly obvious reasons

you are not to single out any one of my remarks as alone stating the law but rather you should consider my remarks as a whole when you retire to deliberate in this case.

I want to make it very plain to you at this point that my actions during this trial in passing upon motions or objections made by counsel are not, of course, to be taken by you as any indication of any opinion that I might have as to the guilt or innocence of the defendant.

As I am sure you all realize counsel not only have the right but indeed they have the duty to object to the introduction into evidence of certain testimony or documents which they believe should not be admitted under the rules. These are questions of procedure and law with which you need not have any concern in your deliberations. No inferences should be drawn from the fact that upon occasions I asked questions myself of certain witnesses. For better or worse these were intended only for clarification or perhaps to expedite matters and certainly were not intended to suggest any opinion on my part as to the guilt or innocence of the defendant or whether one of the witnesses who appeared here in our trial was more credible than another of the witnesses.

The lawyers have all fairly emphasized to you, as I recall it, that it is your recollection and your understanding of the evidence and only your recollection and your

understanding of the evidence that can serve as the basis for the deliberations of you, the jury, in this case.

This proposition flows from the basic principle that you must keep in mind at all times, and that is this: You are the sole and exclusive finders and judges of the facts based upon your recollection of the evidence in the case.

Thus, if the lawyers shall have made arguments to you, as clearly they did, and were entitled to do, and therefore raised their recollections of certain evidence in the case, keep in mind that if your recollection does not accord with their recollection of the evidence as they argued it to you, you must accept your recollection and not theirs as the basis for your deliberations.

The same rule pertains to anything I might say as to my recollection of the case. If what I say does not accord with your recollection of any particular evidence, please take your recollection and reject mine when you deliberate on the facts here before you.

Under our system the law presumes a defendant such as Paul Lawrence Rosenrauch or Larry Rosen, as he apparently preferred to be known in his business life particularly, to be innocent of charges of crime. As I told you at the outset of this trial the indictment is merely an accusation or a

pleading, if you will.

It is no evidence or proof of a defendant's guilt and it does not detract one whit from the presumption of innocence riding in his favor. In sum, as I told you before, you will not give any weight whatsoever to the fact that the grand jury returned this indictment against Mr. Rosen back in April of last year. As you also know the defendant Rosen pled not guilty to the four charges or counts pleaded in this indictment.

Thus the government, as prosecution counsel is well aware, has the burden of proving the charges beyond a reasonable doubt in order to support any conviction. This is a burden which never shifts and it remains upon the prosecution throughout the trial. A defendant under our system does not have to prove his innocence. On the contrary, as stated, he is presumed to be innocent of the charges here in this indictment. This presumption of innocence was in his favor as we started and has continued in his favor right up to this moment when I am speaking and it remains in his favor during the course of your deliberations in your jury room.

It is removed only in and when you are satisfied that the prosecution has sustained its burden of proving the guilt of the defendant under a particular charge or count

beyond a reasonable doubt. The question naturally arises at this point in the discussion as just what does the law mean by this concept of reasonable doubt? In a sense you could say that the words come close to defining themselves. Reasonable doubt is a doubt founded in reason. And arising out of the evidence in the case or perhaps from lack of evidence. It is a doubt which a reasonable person has after carefully weighing all of the evidence. It means a doubt that is substantial and not just shadowy or ephemeral.

A reasonable doubt is one which appeals to your reason, your judgment, your common sense and your own experience in life. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of a difficult or unpleasant duty. It is not sympathy for the defendant.

Rather, ladies and gentlemen, the law succinctly defines reasonable doubt to be a doubt which would cause prudent persons to hesitate before acting in matters of importance to themselves.

Finally on this subject, of course, a reasonable doubt does not mean beyond all possible doubt. If the latter were the applicable standard few if any men and women would ever be convicted of any charge in any court. As you all know, it is practically impossible for a person to be absolutely convinced of any controverted fact which by its nature is not

as question asked by me are of course not evidence in themselves. It is only the answers of the witnesses taken in connection, of course, with the questions they are answering which are evidence.

Finally, as you have been told several times, both the opening statements and closing arguments of Messrs. Hoey and Bush are not evidence.

In addition to your consideration of the direct evidence, so-called, you are permitted to and indeed you should draw from the facts which you find have been proved by direct evidence such reasonable inferences therefrom as seem justified to you in the light of your own common sense and experience.

In this connection of course, whether you are deliberating on direct evidence or circumstantial evidence, you must keep in mind and apply these presumptions or other rules such as the presumption of innocence and the rule of reasonable doubt about which I instructed you a moment ago.

Now I have mentioned circumstantial evidence. Circumstantial evidence is a concept which I am sure you are all familiar with. Very simply for our purposes circumstantial evidence can be defined as evidence which does not itself directly establish a fact sought to be proved but rather by the everyday process of reasoning or, as it is

susceptible of mathematical computation and certainty.

During this trial it has been pointed out to you that this case must be decided only on the basis of evidence submitted during the trial in your presence in this courtroom and not on the basis of anything you may have heard or seen or read outside this courtroom. Generally speaking the evidence in this case, as in all trials, in courts like this, consists merely of two general forms. One is what lawyers and other people call direct evidence. The other is what people call circumstantial evidence.

Examples of direct evidence, of course, would be the sworn testimony of witnesses who came in here in this little box across the room from you, took the oath and were examined both on direct and cross. Another form of direct evidence would be documents or physical objects which in your presence were actually admitted into the record either by agreement or by ruling of the judge. Another form of direct evidence would be stipulations, if any, as to facts entered into by the lawyers for the government and lawyers for the defense.

This is all the direct evidence and the only direct evidence which you are to consider. Any evidence as to which an objection was sustained by the Judge you, of course, should entirely disregard. Questions asked by the lawyers as well

sometimes called, inference, may lead you to the facts sought to be proved.

As I have already told you, you are of course entitled to apply your normal processes of reasoning and inference in deliberating upon the evidence upon you. Therefore, the significance of any piece of evidence, whether it be called by the name circumstantial evidence or direct evidence consists only in whatever light it may shed upon the questions of guilt or innocence which you are called upon to decide.

I turn now to another preliminary subject, albeit a very important one, and that is this: In every crime and certainly in the crimes charged in this indictment there must exist a union or joint operation of act and intent or, as the latter is sometimes called, willfulness or guilty knowledge. The burden is always upon the prosecution, as it knows, to prove both act and intent or willfulness beyond a reasonable doubt. A person who knowingly does an act which the law forbids or knowingly fails to do an act which the law requires to be done intending with bad purpose either to disobey or disregard that law may be found to act with intent or guilty knowledge.

Intent or guilty knowledge may be proved by circumstantial evidence. Indeed it rarely if ever can be

established by any other means. While witnesses may see and hear and thus be able to give us direct evidence of what a defendant does or fails to do, there can be no eye-witness account of the state of mind with which the acts were either done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit the offenses charged.

The proof of the circumstances surrounding the transactions which were brought out in the evidence can supply an adequate basis for finding that the defendant acted wilfully.

You are all familiar with the old adage that the actions of a man or woman must be set in their time and place. You are also familiar with the old saying that just as the meaning of a word is understood only in its relation to other words in a sentence, so the meaning of an act or conversation may depend upon the circumstances surrounding that act or conversation.

Thus, you may consider the evidence which you recall and which relates not only to a given transaction or event but to the surrounding circumstances as well in your consideration of this important issue of intent or guilty knowledge, more about which I will be commenting in the next few moments.

Parenthetically, in this connection, however, let me say now that it is not necessary for the prosecution to prove knowledge of the accused that a particular act or failure to act is a violation of a specific law or statute. Unless and until outweighed by evidence to the contrary, the presumption is that every citizen knows what the law forbids and what the law requires to be done.

I turn to the charges alleged in the indictment.

As you will remember, Counts 1 and 2 charge tax evasion on the part of the defendant Rosenrauch in connection with his returns for calendar years of 1966 and 1967 respectively. Counts 3 and 4, on the other hand, are what is known as false or fraudulent statement counts or accusations, and they accuse Mr. Rosenrauch of having made knowingly false statements in his tax returns filed for the tax years 1966 and 1967.

I am going to discuss with you these counts somewhat in reverse order. Specifically, by that I mean I am going to take up with you Counts 3 and 4 first and discuss the essential elements and the rules and concepts of law thereto pertaining, and last I am going to take up Counts 1 and 2 with you in a similar discussion.

Let me refresh you. You remember I read these counts, all four of them, at the start of our trial, but let

me just briefly repeat them in substantial part for you.

Count 3 charges that on or about the first day of May 1967, within this judicial district, the defendant unlawfully and knowingly did make and subscribe and cause to be made and subscribed a Form 1040 tax return for the calendar year 1966 which contained a written declaration that it was made under penalties of perjury and which was filed with the District Director of Internal Revenue for the Manhattan District here in the Borough of Manhattan, and which joint income tax return the defendant did not believe to be true and correct as to every material matter, in that said return failed to include a report of approximately $4,600 of income received by him from Progressive Drug Co., Inc. during calendar year 1966.

Count 4 follows the same language in substantial part. Here, in Count 4, it is charged that on or about the 13th day of July 1968 the defendant unlawfully and knowingly did make and subscribe or cause to be made and subscribed a Form 1040 tax return for calendar year 1967, and here the false written declaration or statement is charged as follows: in that said return failed to include a report or failed to report approximately $11,011.06 of income received by the defendant Rosenrauch from Intercontinental Hangers, Ltd. during calendar year 1967.

I am going to take up with you the essential elements which the Government must prove beyond a reasonable doubt in order to prove Counts 3 and 4 or one of them.

Basically, in order to support any conviction here, as the Government counsel know, it is the obligation of the prosecution to prove beyond a reasonable doubt the following four essential elements:

First, that the defendant Rosenrauch made and subscribed the joint tax return, that is, the Form 1040, for the year in question. As I recall the evidence in this case, the tax returns of Mr. Rosenrauch and his wife for 1967 and 1966 as well are in evidence, and as I understand the parties, there is no dispute but that the defendant's name appears on those returns, both of them, and he admits that that signature or those signatures are in his handwriting.

If you are satisfied beyond a reasonable doubt of these facts, then the first element is satisfied as to each of Counts 3 and 4.

The second essential element which the Government must prove beyond a reasonable doubt under Counts 3 and 4 is as follows: that the joint tax return for the year in question contained a written declaration that it was made under penalties of perjury. Again, as I understand the parties, they do not seriously contest this.

Put differently, the returns in evidence, as I understand them to concede, contain this written declaration right on the face of the returns, which were signed by Mr. Rosenrauch.

Again, therefore, if you were satisfied beyond a reasonable doubt that this was the fact, then the second element is established as to each of Counts 3 and 4.

The third essential element which the Government must prove beyond a reasonable doubt under these two counts under discussion is as follows: that the return for the year in question was not true and correct in every material matter and that the defendant knew that it was not true and correct in the material matters alleged.

Here, of course, the essential core of Count 3 has to do with those payments which came to the defendant from Progressive Drug, and the Government's contention, as you well know, is that the defendant did not declare those as payments or income and that he knew full well that these were income and that therefore this was a false and fraudulent matter, that he did not declare those payments in any way, shape or manner in respect to his 1966 Form 1040.

Of course, in regard to Count 4, the material false matter is said to be the omission, thepurposeful and wilful and intentional omission of payments of $11,000-plus from this

Canadian subsidiary of Mr. Hangers, Inc., known as Intercontinental Hangers, Ltd.

Here, the Government says that the defendant well knew that these payments to him were income but that he wilfully and purposely and fraudulently omitted to declare these payments in any way, shape, form or manner as income in his 1967 return.

Now, the fourth and last essential element comes down to this: proof beyond a reasonable doubt that in signing or subscribing to the tax return in question, the defendant, Larry Rosenrauch, acted wilfully and knowingly at the time. In other words, he well knew that the return was not true and correct as to what it reported in the year in question.

I won't, of course, summarize the evidence in this case, though there have been a number of documents submitted into evidence and a considerable amount of testimony. It has been a relatively short trial, and there is no need for me to recite everything as I recall it. Suffice it for me to say here and review for you the contentions or at least the major contentions of the parties.

First of all, from the Government's side of the coin in respect to Count 3, you know that the Government has argued that if you look at the return there is no mention of any payments anywhere from Progressive Drug. More than that,

the Government argues that from time to time the defendant Rosenrauch took startlingly different positions as to just what these payments to him from Progressive Drug amounted to.

As the Government argument goes, he took these several rather markedly different positions depending on what he thought was most advantageous at the time he was called upon to take positions or decided to take positions in respect to these payments.

Furthermore, the Government points out that here at trial it is the position of the defense in respect to this Count 3 that there was no false statement, in that the $4,600 worth of payments which came to Mr. Rosenrauch during Calendar year 1966 were what is known in accountancy and tax circles as T & E payments, that is, travel and entertainment, which he expended on behalf of sales and other efforts for Progressive Drug.

As you know, he testified to this effect himself here at trial. He brought in various witnesses, such as Mr. Stern and others, to talk about the trips he took that year and they said this was all designed to seek additional business for Progressive Drugs.

The Government says that that is a completely after-the-fact contrived defense, for several reasons:

For example, the Government argues there is no

documentation, as there should be, in the books and records of Progressive Drugs showing that these expenditures were made for travel and entertainment in connection with legitimate corporate sales activities of Progressive Drugs.

Not only that: you remember that the Government produced certain witnesses like Mr. Little and Mr. Malbe, who were long-time employees and officers of Progressive Drugs, and they told us about what they saw of Mr. Rosenrauch in person and his activities, and the Government says that if you accept their testimony as correct, that indicates beyond a peradventure that they were the ones who would know and that they had no knowledge that Mr. Rosenrauch was doing anything in the nature of sales or promotional activities for Progressive Drugs and that, therefore, these were nothing but payments of income to Mr. Rosenrauch, which he did not honestly declare in his 1966 return.

Well, there are other arguments that have been made, and I don't wish to suggest that youshould ignore them in respect to Count 3, but this should give you an indication of the kind of issues which are raised in connection with, particularly, the third and fourth essential elements in respect to Count 3.

Of course, the factual picture is a little bit different, as you well know, in respect to Count 4. The

Government here, as you well know, maintains that the payments which came to Mr. Rosenrauch, partly by cash and partly by check, again in the year 1967 from that Canadian subsidiary known as Intercontinental Hangers, were really nothing more or less than income and that it was only an after-the-fact contrivance by the defendant Rosenrauch that he caused certain information to be given to the Montreal chartered accountants so that they would set this up as if it were a loan, and the Government argues further that this alleged loan is not supported by any loan documents or any indications of any interest payments or, indeed, any certain time as to when the loan should be paid back by Lawrence Rosenrauch.

On the other side of the coin, Mr. Rosenrauch argues that the proof shows that there came a time, admittedly quite a bit after 1967, but nevertheless the records were finally set up showing that these payments were a loan to him, and he says that he paid the loan finally last year, to which the Government responds that that is all very well and good, but those repayments, so-called, of the loan did not take place until after the indictment against Mr. Rosenrauch was filed in his case in this court.

Well, it is up to you to decide, keeping in mind the evidence as you recall it, and keeping in mind these four essential elements, most particularly numbers 3 and 4, which

are the ones in hot dispute in this case.

I might just say, parenthetically, in respect of these payments, both in the year 1966 from Progressive Drug and in the year 1967 from Intercontinental Hangers, two points:

First, you will remember that the checks and the cash, according to the Government's evidence and their version thereof, were divided in half. In other words, the Government has credited Mr. Rosenrauch for the purposes of this case basically with only one half of those payments because of evidence to the effect that the other half went to this woman known as Eve Abrams, the wife of a man named Joe Abrams. So when you look at the checks in evidence, you might keep that point in mind, as has been argued to you by the Government.

The second matter I want to point out is, you will recall that during the trial I allowed the Government to put in evidence as to the continuation of these payments for a few months at least into the year 1968. You well know that we are not concerned with any tax matters of Mr. Rosenrauch directly in the year 1968. No charges are leveled against him for that tax year, indeed.

On the other hand, I instruct you that I allowed that evidence so that both the Government and, indeed, the

defense could make such arguments as they thought were appropriate on the basis of those payments, either to show intentional, wilful and knowledgeable conduct, as the Government argues, on the part of the defendant, or, conversely, to show that there was no such thing on the part of the defendant, as he argued.

I turn now to Counts 1 and 2. Those are what are somewhat simplistically called the tax evasion counts.

As you well understand, there is a considerable factual overlap in respect of Counts 3 and 4 on the one hand with respectively Counts 1 and 2 on the other hand. They both concern the same tax years, and they both concern these payments, 1966 from Progressive Drugs and in 1967 from Intercontinental Hangers up in Canada.

However, I caution you that the essential elements are somewhat different, and you should bear those in mind when you deliberate on these counts in this case.

Let me read to you in significant part once again Counts 1 and 2.

Count 1 charges that on May 11, 1967, the defendant, at a time when he was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife for the calendar year 1966 by preparing and causing to be prepared and by filing

with the District Director of Internal Revenue for the Manhattan District a false and fraudulent income tax return in behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was in the sum of $10,476.76 and that the amount of income tax due and owing thereon was the sum of $1,924.89, whereas he, the defendant, then and there well knew their taxable income for that year was the sum of $15,076.76, upon which there was a tax due and owing to the United States in the sum of $3.029.19.

Count 2 deals with the filing of the defendant's Form 1040 for calendar year 1967. Here he is charged with evading and defeating a large part of the income tax due and owing by him and his wife for that calendar year by filing a return wherein it was stated that the taxable income for his wife and himself for 1967 was the sum of $12,396 and that the amount of income tax due and owing thereon was the sum of $2,359, whereas, as he then and there well knew, their taxable income for the year 1967 was the sum of $24.007.06, upon which taxable income was due and owing to the United States in the amount of $5,662.54.

Counts 1 and 2 respectively, of course, again, deal, as I have said before, with the alleged failure and purposeful failure, by the by, of Rosenrauch to declare in 1966 the Progressive Drug payments as income and in 1967 the

Intercontinental Hangers payments as income.

Therefore, not surprisingly, as you also well know by this time, the arguments dealing with Counts 1 and 2 are very, very much the same. However, let me point out to you that the three essential elements which the Government must prove beyond a reasonable doubt in order to support a conviction of either count 1 or 2 or both of them are as follows:

First, proof beyond a reasonable doubt that a substantial amount of Federal income tax was due and owing from the defendant for the calendar year in question.

Second, proof beyond a reasonable doubt that the defendant made an attempt to evade or defeat the tax due in those two years.

Third, that the defendant made the attempt knowingly and wilfully.

I will take up with you these three elements.

The first element -- that is, the amount of tax due and owing, where the Government must prove beyond a reasonable doubt that the defendant had taxable income which he failed to report on the tax return in question, and that had he reported such income therewould have been a substantial tax due and owing:

You will remember that during the course of the trial the Government put on the stand a revenue agent by the

name of Mr. Passaretti, who testified as to certain computations he made based upon assumptions which in turn he said were based on the evidence in the case, as I understand it. And he made certain computations which, if you were to find them supported by the evidence and correctly made in the mathematical sense by the revenue agent, would come out to show that the substantial amounts which were not declared and, if properly declared, would have cast up the additional income as alleged in Counts 1 and 2 respectively.

You also may recall that at the time Mr. Passaretti was on the stand there were admitted into evidence two documents which in effect were his computations along these lines. I think they were known as Government's Exhibits 50 and 51 in evidence.

I might point out thatthough it is an obligation under the law that the Government prove substantially larger taxes due and owing other than what were declared here, the Government is not required to prove the precise amounts to the penny which are alleged in Counts 1 and 2. It is sufficient, in other words, ladies and gentlemen, under the law, that the proof establishes that a substantial part of the tax was evaded in the year in question.

Turning to the second essential element -- and this is one one where there must be proof beyond a reasonable

doubt that the defendant attempted to evade or defeat the tax due in the year in question:

As you know, each count alleges that the defendant did attempt to do so by filing a false income tax return or causing such a false income tax to be returned on behalf of himself and his wife. Very simply, under the law, ladies and gentlemen, an attempt to evade taxes in the sense here made is or occurs when a false return is knowingly filed by a taxpayer.

Put differently, there can be proof of an attempt to evade taxes when the proof shows beyond a reasonable doubt that the taxpayer knew that his return in question was false and that he purposely and knowingly filed it, notwithstanding his knowledge that it was not complete, true and correct.

Therefore, the Government must prove that Rosenrauch knew that he had income in the years in question which was taxable, and he was required by our tax laws to report.

The Government must prove, further, that the defendant Rosenrauch attempted to evade or defeat the tax on the unreported income as alleged in either or both of these years by knowingly and purposely failing to state and report all of this as income, which he knew he had during the year and which he knew it was his duty to report in his Forms 1040 for

each of the years in question.

Somewhat allied to the second essential element is the third essential element, which very simply is proof beyond a reasonable doubt of wilfulness or guilty knowledge on the part of Rosenrauch when he filed or caused to be filed these two tax returns.

If you find that Rosenrauch understated his income but that the Government has not proved behond a reasonable doubt that he did so wilfully, with an intention to evade or defeat his income taxes, then you would be obliged to acquit Mr. Rosenrauch.

The prosecution must establish on each count in this series, that is, 1 and 2, that in the year in question Mr. Rosenrauch acted with a specific intent of concealing the true taxes known by him to be due to the United States.

In this regard, as I have already suggested, evidence that Rosenrauch actually knew that the returns were false but nonetheless filed them or caused them to be filed anyhow would be proof that he was acting wilfully and with purposefulness and guilty knowledge and intent in the sense here meant.

On the other side of the coin -- and I am sure you will understand this, but it is important -- if all the evidence shows to you is that there was a good-faith misunder-

standing on the part of Rosenrauch as to his liability for taxes, this would not constitute, under the law, an attempt to evade or defeat his taxes in the sense meant in Counts 1 and 2.

In other words, the law does not permit a person or a citisen to be convicted of tax evasion simply because he made errors of law or mistakes of fact or errors of judgment. A defendant who acts in good faith in making his tax returns cannot be convicted of tax evasion. Therefore, this third essential element is crucial.

The Government must prove more than mere negligence or stupidity or carelessness.

On the other side of the coin, however, while I am discussing this point, I should add that a citizen may not shut his eyes to obvious facts and then later say he doesn't know of their existence. He can't just put out of his mind obvious facts which were known to him and should have brought home to him that he should have made a different report or return in his tax returns in question and then hope that he can escape an accusation of tax evasion.

Thus, to repeat, if a person believes that he had income upon which taxes are due but nevertheless desires and intends to conceal his true tax liability from the Government or makes it his conscious purpose to engage in conduct

designed to defraud the Government of the true tax due for the year in question, then of course you would be entitled to find that he is not acting in good faith but rather that he is acting wilfully and with intention to evade his taxes properly due to the Internal Revenue Service.

Conversely, if you find that he had an erroneous but still, nevertheless, honest, good-faith believe that he owed no more taxes than those which he reported, then he cannot be found guilty by you, the jury, of tax evasion, as here pleaded in Counts 1 and 2.

There are a couple of other matters that I want to take up with you. You may remember, for example, that one of the matters that came up during the course of the evidence here was testimony by Mr. Bertoli that he prepared, at least in draft form, Mr. Rosenrauch's 1966 personal Form 1040 for Mr. Rosenrauch and his wife. Bertoli also testified, as I recall it, at least that he brought home, that is, he told Mr. Rosenrauch that this return was not complete and true in that it did not properly recite these payments from Progressive Drugs to Rosenrauch and others, and Bertoli further, as I recall it, testified he knew about the payments, because I think he got some himself or, at the very least, he knew who did get them, including Rosenrauch. Therefore, he did not -- indeed, he testified he refused to sign the 1966

tax return of Mr. and Mrs. Rosenrauch, because he did not believe it was a truthful return.

On the other side of the coin, as you know, the defense argues that Bertoli is not to be trusted and that he had some kind of a falling out with Mr. Rosenrauch and that his testimony was motivated by malice and ill will against Mr. Rosenrauch.

Beyond that, as I understand the defense, they argue that whether or not Bertoli signed that -- and they must concede there is no signature of Bertoli on there -- they say that that was all due to a misunderstanding, an honest misunderstanding on the part of Mr. Rosenrauch. He thought that Bertoli was going to sign the return after he did.

Further, as I understand Rosenrauch, he argues that Bertoli prepared everything and said, contrary to what Bertoli testified, that everything was true and complete and that it was perfectly proper and honest for Mr. Rosenraoch to sign the 1966 return and rely on the preparer's accuracy and judgment.

With respect to the 1967 return, I think the evidence is to the effect that Bertoli did not prepare that but that somebody else did for Mr. Rosenrauch, and he makes the same argument, in effect, in this respect for 1967, to wit,

that he relied on the preparer that year for preparing a correct and honest and complete and true 1967 tax return.

Well, under the law, it is true, of course, as I think all of you know, a taxpayer may delegate the responsibility for preparation of his return to a person such as an accountant or a lawyer whom he has reason to believe is competent to handle such matters.

Furthermore, under the law, if such a preparer, if I may call him that, makes mistakes on his own, they are not deemed to be attributable to the taxpayer himself. However, it is also true that under the law a taxpayer is required to give or to make available accurate and complete information to that preparer with respect to his income for the taxable year in question.

Moreover, under the law, the defendant cannot blame or shift responsibility to the person he retains to prepare his return if he deliberately withholds vital information from that person or directs that person to ignore relevant, material information to the preparation of that person's return for the year in question.

Therefore, if the defendant is shown by the evidence to have provided full and accurate information as to his income for a given year and the defendant is then shown to have adopted, signed and filed the return prepared by that

preparer without having any reason to believe that they were anything less than complete and correct, then you would be obliged to find the defendant not guilty.

On the other hand, if you find that the defendant wilfully and knowingly did not provide full and accurate information to the tax return preparer or that he knew that the tax returns as prepared by the preparer were not correct and accurate, and nevertheless he went along and forced these returns to be filed knowing they were not correct and accurate, then it would be no defense to the defendant that somebody else prepared the returns, in whole or in part.

There are a couple of other matters in connection with these four counts that I ought to mention.

First of all, I mentioned that we had some expert testimony from Mr. Passaretti about his computations as to what the tax should have been as reported by the defendant. We also have those computations in evidence. Passaretti, therefore, gave what lawyers frequently call expert or opinion evidence.

Normally, as you know, in these trials we hear from witnesses who can give us direct evidence only, that is, evidence of what they heard or saw or the defendant said or did. An exception to this rule is the so-called expert or opinion testimony, which is allowed under certain

circumstances.

Another example of this would be a witness produced by the defendant, Mr. Gelfand, who is also an accountant and who gave us certain opinion evidence.

You are entitled to accept or reject this opinion evidence, depending upon how you assess the basis which these witnesses gave us for their opinions or expert evidence, if you will, and you don't have to accept them just because they are called expert. You can accept or reject, wholly or in part, the opinion evidence of the gentlemen who came in and gave us their opinions, such as those two gentlemen did.

That leads me into an important subject, which I must mention before I conclude, and that is this:

Under the law, you are the sole judges of the credibility of the witnesses who appeared here and testified during our trial. You are also the only ones who decide what weight their evidence should get or receive. In this important and exclusive function of yours, you are entitled to consider the demeanor of these witnesses as they sat here and gave their evidence, the strength or weakness of recollection of past events which they exhibited in their testimony, any motive which they might have to obfuscate or distort the truth, any relationship they might have either to the defense or the prosecution, any interest which they might

have in the outcome of this case, that is to say, your verdict.

These and other obvious criteria, of course, you should consider in appraising the credibility of the witnesses who testified here before you.

As you know, I am sure, there were certain conflicts in the testimony between Government witnesses on the one hand and defense witnesses on the other. The lawyers have no right to tell you how to assess credibility, nor does the Judge. You and you alone have that important and, indeed, critical function in a trial of this kind.

Let me mention a couple of other things about witnesses.

Just because a man happens to come in and tells us that he is a Government agent or official does not mean that he has some sort of special sanctity as a witness. Put differently, ladies and gentlemen, you are entitled to weigh the credibility of a witness whocomes in here and says he is a Government employee or agent just like you can assess the credibility of any other person.

I have come virtually to the end of my remarks.

You are entitled to see any or all of the exhibits which were actually admitted into evidence during the trial. My practical advice to you is, however, that you wait until

you start to deliberate and then, if you want to see any exhibits, send out a note to me telling me what it is you want to see, and Mr. Bush and Mr. Hoey and I will see to it that you get whatever you ask for.

We will require a general verdict from you on each of these four counts, and you should report that verdict through your foreman, Mr. Charon. You should report on each count whether you find the defendant, Rosenrauch, guilty or not guilty.

Whatever your verdict on each of these four counts is, it must be unanimous under the law.

I am going to tell you that I have concluded my remarks, subject, however, to my wish to have the lawyers comment upon my instructions. Perhaps I misstated something unwittingly or left something out. Rather than have you retire, we will reverse the procedure, and we will retire briefly, and we will come back and commit the case to you.

(In the robing room:)

THE COURT: Mr. Bush?

MR. BUSH: I have four comments, your Honor.

First, I would request that you specifically instruct the jury that testimony which has been struck from the record is not to be considered by them.

THE COURT: I already have done that, and I won't

JQP

say any more. Exception to you.

MR. BUSH: Secondly, I think perhaps inadvertently you said both the payments from the Progressive Drug Company and Intercontinental, only half of them went to the defendant. It is the Government's position that this was only the case with respect to Progressive but not the position with respect to Intercontinental, and I think --

THE COURT: You are right. Say no more. I will correct that.

MR. BUSH: Thirdly, and a very insignificant point, you pronounced the Government witness' name Berloti, and his name is in fact Bertoli.

THE COURT: I was thinking of Passaretti, and I so accept that.

MR. BUSH: Lastly, I am not sure, and perhaps Mr. Loey can correct me if I am wrong: I don't believe that the preparer defense is really a defense they put forward for 1967, but I may be mistaken.

THE COURT: I perhaps over-egged the pudding, but I am going to leave it at that, unless Mr. Hoey wants me to take it out.

Mr. Hoey?

MR. HOEY: I do have one. You did mention in discussing Count 2 that there was cash and checks and that deals

with the Intercontinental Hanger which was only by check. I think it was also mentioned in Count 4.

THE COURT: I think you agreed to that.

MR. BUSH: I did not specifically recall that, but I see no harm in correcting that.

THE COURT: All right.

MR. HOEY: Of course, I do agree that the testimony only related to Eve Abrams on Count 1.

THE COURT: There is no doubt on that. That is completely my fault. I will make these confessions and corrections to the jury and commit the case to them.

MR. HOEY: Intercontinental is all by check.

THE COURT: Very well. I will correct that now.

(In open court:)

THE COURT: Ladies and gentlemen, a couple of matters which counsel have been good enough to bring to my attention, quite correctly, as I see it, that I want to bring to your attention in turn.

First of all, I believe I stated in the course of my remarks summarizing the contentions of the parties in respect to all counts that the Government was crediting the defense with having received only one half of the payments not only from Progressive Drugs during the year 1966 but as well from Intercontinental Hangers in 1967. I misstated that.

All agree that, as we recall the evidence, it was only in respect to the payments which were made from Progressive Drugs where Mr. Rosenrauch got half of those and Eve Abrams got the other half.

This was not true, in other words, with respect to the payments which came to Rosenrauch from Intercontinental Hangers up in Canada.

The second thing I want to bring to your attention is that I misstated Mr. Bertoli's name. I think in thinking of Mr. Passaretti I called him something other than Mr. Bertoli. I apologize to you. You knew whom I was referring to, I think, but I did mispronounce his name.

Another thing counsel points out to me, and I think they are correct on this, too, and that is that in discussing the payments and the contentions of the parties in respect of these payments, I said that some of them were made in cash and some were made by check, implying if not stating that I was talking about not only Progressive Drug payments but as well Intercontinental Hanger payments.

In regard to the latter, both sides agree that the payments from Intercontinental Hangers were by check. None of those payments, in other words, were shown by the evidence to be in cash.

On the other hand, in respect of Progressive Drugs, as I stated, or at least as I recall the evidence, some of

payments in 1966 were in cash and some, at the latter end of the year, were by check.

Without any further ado, we will have the marshal sworn, and we will commit the case to you.

I am going to have Mr. Viscardi give you a clean copy of the indictment so that it can act as a guide -- and a guide only -- to your deliberations.

(The deputy marshals were duly sworn, and the jury retired in their custody to deliberate upon a verdict.)

(Jury in box:)

THE COURT: I am sorry to bring you back to the room, but it has been brought to my attention that we forgot to excuse the alternates, Miss Bonaro and Miss Davis. You are now excused with the thanks of the Court. Only the jury of twelve, of course, can deliberate in this case.

I thank you both again personally and on behalf of the litigants. You are excused.

(The alternate jurors left the courtroom.)

(At 3:10 p.m., the jury left the courtroom to deliberate upon a verdict.)

(At 3:50 a note was received from the jury.)

(At 4:06 p.m., the jury returned to the courtroom.)

(The roll of jurors was called. All answered

present.)

BY THE CLERK:

Q Mr. Foreman, has the jury agreed upon a verdict?

A Yes.

Q How do you find the defendant, Paul Lawrence Rosenrauch in Count 1?

A Guilty.

Q Count 2?

A Guilty.

Q Count 3?

A Guilty.

Q Count 4?

A Guilty.

THE COURT: Mr. Hoey, would you like the jury polled?

MR. HOEY: Yes.

(Each juror, upon being asked whether the verdict as recorded was his or her verdict, answered affirmatively.)

THE COURT: Ladies and gentlemen, I won't keep you long. However, I would like to remark that we are grateful for your obvious attention and efforts to be on time, with some difficult problems of elevators et cetera throughout our trial last week and today.

It was a pleasure for me certainly to serve with you, and I wish you Godspeed in the future in your own lives.

I believe that the news we have is that they are excused, and we do have your service cards, which perhaps are valuable tokeep as a memento or record of your services as jurors in this Federal Court.

Goodbye and good luck.

(The jury left the courtroom.)

THE COURT: April 12, 1974, at 2:15 is fixed as the day of sentence. A pre-sentence report is ordered with respect to the defendant.

Are there any applications before we adjourn, gentlemen?

MR. HOEY: Your Honor, that is Good Friday.

THE COURT: So it is. I personally plan to work that day, even though it is Good Friday, but if you would prefer some other day, feel free to say so.

MR. HOEY: Could you make it the 19th, your Honor?

THE COURT: I will be glad to. April 19th, at the request of Mr. Hoey. Same time: 2:15 o'clock.

I regret to state that due to the shortage of courtrooms it is by no means certain where we will be on that day. We are going to have to revise the schedule. I can't tell you, but presumably it will be in another courtroom.

MR. HOEY: You will have motions now?

THE COURT: If you prefer to carry motions until the

day of sentence, I am agreeable.

MR. HOEY: I would, your Honor.

THE COURT: That will be done. If you want to make the motions orally, I would appreciate your letting Mr. Bush know in advance, so he can respond, or you can make them in writing. I will leave that up to you.

MR. HOEY: May I ask that the defendant be continued on his own recognizance?

MR. BUSH: The Government has no objection to that.

THE COURT: Mr. Rosenrauch, you may be continued on your own recognizance. As you know, you must be here as ordered by the Court or run the risk of having your bail changed or be accused of bail jumping. I don't think you fail to understand that.

You must be here at 2:15 o'clock on April 19th, when I will hear the motions, and then I will get to the sentence and hear the parties in that respect.

Thank you, gentlemen.

The jury returned the verdict in writing. We will mark that as a Court's Exhibit.

(Court's Exhibit 1 marked for identification.)

(Adjourned for sentencing to April 19, 1974, at 2:15 p.m.)

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JUDGMENT AND COMMITMENT (Rev. 2-68) DF IRS Tyler

555A

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

FILED
APR 19 1974
S. D. OF N. Y.

United States of America

v.

PAUL LAWRENCE ROSENRAUCH,
a/k/a Lawrence Rosen

No. 73 Crim. 408 HRT

On this 19th. day of April, 19 74 came the attorney for the government and the defendant appeared in person and[1] by Joseph P. Hoey, Esq., counsel

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty, and a verdict of Guilty by a jury has been convicted of the offense of : the defendant, who during the calendars years 1966 and 1967 was married, unlawfully, wilfully and knowingly did attempt toevade and defeat a large part of the income tax due and owing to the United States of America for those calendar years by mailing, filing and causing to be filed with the District Director of Internal Revenue a false and fraudulent income tax return on behalf of himself and his wife for those years. The defendant, did unlawfully and knowingly ~~did~~ make and subscribe, and caused to be made and subscribed, for the calendar years 1966 and 1967 a Joint Income Tax Return, which said Joint Income Tax Returns the defendant did not believe to be true and correct as to every material matter, said income tax returns having contained a written declaration that it was made under the penalties of perjury, and which were filed with District Director of Internal Revenue for the Manhattan District.
(In violation of Title 26, United States Code, Sections 7201 and 7206(1))

as charged[3] in counts one, two, three and four.
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] SEVENTY (70) DAYS on each of counts one and two to be served CONCURRENTLY with each other.

On each of counts three and four the imposition of sentence is SUSPENDED and the defendant is placed on probation for a period of THREE (3) YEARS subject to the standing probation order of this Court.

-AND-

IT IS ADJUDGED that on each of counts three and four the defendant is FINED TWO THOUSAND FIVE HUNDRED ($2500.) DOLLARS on each count, (TOTAL FINE $5000.). Fine is to be paid within sixty-days from the time that defendant's conviction is affirmed on appeal, or the defendant is to be COMMITTED until the fine is paid or he is otherwise discharged according to the law.

-AND-

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

THE DEFENDANT IS TO BE TAXED THE COST OF THE PROSECUTION OF THIS CASE.
The defendant is released on his own recognizance pending appeal.
Execution of Judgment and Commitment are STAYED pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

ENTERED
APR 2 2 1964

The Court recommends commitment to[6]

[signature]
United States District Judge.

[signature]
Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel: the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively, and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

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